

**Form 603**  
Corporations Act 2001  
Section 671B

**Notice of initial substantial holder**

To Company Name/Scheme OreCorp Limited

ACN/ARSN 147 917 299

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

Name Federation Mining Pty Ltd (**Federation**), International Mining & Finance Corporation (**IMFC**) and Simon Mark Le Messurier (**Le Messurier**)

ACN/ARSN (if applicable) 641 718 989

The holder became a substantial holder on 05/08/2020

**2. Details of voting power**

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

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares ( <b>Shares</b> )	28,288,639	28,288,639	13.31% (based on 212,579,296 Shares on issue)

**3. Details of relevant interests**

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

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Federation IMFC Le Messurier	Federation – Relevant interest under section 608(8) the <i>Corporations Act 2001</i> (Cth) ( <b>Corporations Act</b> ) on execution of the transfer and subscription agreement attached at Annexure A ( <b>Transfer and Subscription Agreement</b> ) and, following closing of the transfer of Shares under that agreement, a relevant interest under section 608(1) of the Corporations Act as the registered holder and beneficial owner of the Shares.  IMFC – Relevant interest under section 608(3)(a) of the Corporations Act by virtue of having voting power of above 20% in Federation.  Le Messurier – Relevant interest under section 608(3)(a) of the Corporations Act by virtue of having voting power of above 20% in Federation.	28,288,639 Shares

**4. Details of present registered holders**

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

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number
Federation	J.P. Morgan Nominees Australia Pty Limited (ACN 002 899 961) ( <b>JPM</b> )	As at the date of this notice, JPM, and following closing of the Transfer and Subscription Agreement, Federation.	28,288,639 Shares

**5. Consideration**

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

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
Federation, IMFC and Le Messurier	05/08/2020	As per the Transfer and Subscription Agreement.		28,288,639 Shares

## 6. Associates

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

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

## 7. Addresses

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

Name	Address
Federation	1158 Barrenjoey Road, Palm Beach, NSW 2018 Australia
IMFC	Apartment 18, 1299 Gilpin Street, Denver, Colorado, United States
Le Messurier	1158 Barrenjoey Road, Palm Beach, NSW 2018 Australia
JPM	Level 18, 83-85 Castlereagh Street, Sydney, NSW 2000 Australia

## Signature

print name Simon Mark Le Messurier

capacity Director

sign here *S.M. Le Messurier*

date 07/08/2020

### DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:  
(any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and  
(any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).  
See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

## ANNEXURE A - TRANSFER AND SUBSCRIPTION AGREEMENT

This is "Annexure A" of 46 pages referred to in the Form 603 (*Notice of initial substantial holder*) lodged by Federation, IMFC and Le Messurier.

Date: 07 August 2020

Signed for and on behalf of Federation, IMFC and Le Messurier by:

*S.M. Le Messurier*

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Signature

Print name: Simon Mark Le Messurier

Print position: Director

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# **Transfer and Subscription Agreement**

Federation Gold Pty Ltd (to be renamed Federation Mining Pty Ltd) (ACN 641 718 989)  
AustralianSuper Pty Ltd (ACN 006 457 987) as trustee for AustralianSuper (ABN 65 714 394 898)  
International Mining and Finance Corporation  
Simon Mark Le Messurier  
James Edward Askew

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## Parties

- 1 **Federation Gold Pty Ltd** (to be renamed Federation Mining Pty Ltd) ACN 641 718 989 of 1158 Barrenjoey Road, Palm Beach, NSW 2018 Australia (**Federation** or **Warrantor**)
- 2 **AustralianSuper Pty Ltd (ACN 006 457 987) as trustee for AustralianSuper** ABN 65 714 394 898 as custodied by J.P. Morgan Nominees Australia Pty Limited as nominee for JPMorgan Chase Bank NA (Sydney Branch) of Level 33, 50 Lonsdale Street, Melbourne, VIC 3000 Australia (**AusSuper**)
- 3 **International Mining and Finance Corporation** of 1299 Gilpin Street, Apartment 18, Denver, Colorado 80218 USA (**IMFC** or **Warrantor**)
- 4 **Simon Mark Le Messurier** of 1158 Barrenjoey Road Palm Beach NSW 2108 Australia (**Warrantor**)
- 5 **James Edward Askew** of Apartment 18, 1299 Gilpin Street Denver, Colorado 80218 USA (**Guarantor**)

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## Background

- A Federation and AusSuper entered into a non-binding Memorandum of Understanding on 25 June 2020 to facilitate AusSuper's investment in Federation and Federation's progression of the Blackwater Mining Project and its Strategic Plan.
- B This agreement sets out the binding terms for:
  - (1) AusSuper's subscription for Convertible Notes with an aggregate face value of \$50 million issued by Federation; and
  - (2) the transfer of AusSuper's Mining Portfolio Shares to Federation in exchange for 49% of the ordinary shares in Federation,as contemplated by the Memorandum of Understanding between Federation and AusSuper dated 25 June 2020.

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and

- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

## 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this agreement.

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## 2 Conditions

### 2.1 Conditions precedent to Completion

Clause 3 (**Transfer and Subscription**) and 4 (**Completion**) are not binding until the following Conditions are satisfied or waived by the party or parties identified as being entitled to the benefit of that Condition:

- (a) AusSuper has received all consents or direction orders required under the *Overseas Investment (Urgent Measures) Amendment Act 2020* and/or the *Overseas Investment Act 2005 (New Zealand)* for the approval of the:

- (i) issue of the Convertible Notes to AusSuper; and
- (ii) issue of the Federation Shares to AusSuper;

and any other transaction contemplated by this agreement or the Convertible Note Deed, either without condition or otherwise on conditions acceptable to AusSuper and Federation (each acting reasonably) and such consents and direction orders have not been withdrawn, suspended, revoked or materially adversely amended prior to the Completion Date (**AS OIO Approval**);

- (b) IMFC and Federation has received all consents or direction orders required under the *Overseas Investment (Urgent Measures) Amendment Act 2020* and/or the *Overseas Investment Act 2005 (New Zealand)* for the approval of the:

- (i) issue of the Performance Shares to the FED Executives Share Plan Trustee or to FED Founders;
- (ii) variation of rights of the shares in Federation held by the Warrantors;

and any other transaction contemplated by this agreement, either without condition or otherwise on conditions acceptable to IMFC and Federation and AusSuper (each acting reasonably) and such consents and direction orders have not been withdrawn, suspended, revoked or materially adversely amended prior to the Completion Date (**IMFC and Federation OIO Approval**);

- (c) Federation (or Tasman Mining) has entered into either:

- (i) a written agreement arranged by the New Zealand Provincial Development Unit which administers the Provincial Growth Fund (**PGF**) for the provision by the New Zealand state (acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment) of a loan of at least NZ\$15 million to Federation (or Tasman Mining) (**PGF Loan**) on terms and conditions acceptable to AusSuper acting reasonably (**PGF Loan Agreement**) and the PGF Loan Agreement becoming unconditional in

accordance with the terms of the PGF Loan Agreement (other than for the issue of the Convertible Notes and other than customary drawdown conditions); or

- (ii) a written agreement for a loan of at least NZ\$15 million to Federation (or Tasman Mining) with a financier other than the New Zealand Government (acting through the PGF) on terms and conditions acceptable to AusSuper (acting reasonably), and such agreement becomes unconditional (other than customary drawdown conditions).

## 2.2 Satisfaction or waiver of Conditions

- (a) Each party must each use all reasonable endeavours to:
  - (i) satisfy the Conditions by the date 4 months after the date of this agreement (**Conditions Precedent Date**); and
  - (ii) cooperate with the other parties in taking all reasonable steps requested of it to satisfy the Conditions.
- (b) The parties must each promptly notify the other in writing if it becomes aware that a Condition either is satisfied or is incapable of being satisfied before the Conditions Precedent Date.
- (c) Each Condition may, at any time prior to the Conditions Precedent Date, be waived by agreement between AusSuper and Federation.
- (d) Either AusSuper or Federation may, provided it has complied with its obligations under clause 2, terminate this agreement by giving not less than two Business Days' written notice to the other party if at any time before Completion:
  - (i) a Condition is not satisfied or waived by the Conditions Precedent Date; or
  - (ii) a Condition becomes incapable of being satisfied by the Conditions Precedent Date or the parties agree that the Condition cannot be satisfied by the Conditions Precedent Date.

## 2.3 Obligations in relation to AS OIO Approval

- (a) AusSuper must:
  - (i) prepare and lodge each notice or application required to be given by AusSuper for the purposes of obtaining that AS OIO Approval and take all reasonable procedural steps it is responsible for in order to apply for the AS OIO Approval, including responding to requests for information at the earliest practicable time, and using its reasonable endeavours to obtain such approvals as soon as practicable after the date of this agreement;
  - (ii) give Federation a reasonable opportunity to review an advanced draft of each notice or application and any associated materials required to be provided to the OIO for the purposes of applying for the AS OIO Approval (provided that any private, confidential or commercially sensitive information within such materials may be redacted) and consider in good faith any comments provided on such drafts;
  - (iii) keep Federation reasonably informed of progress towards obtaining AS OIO Approval including providing Federation with copies of any material

correspondence to or from the OIO in relation to the application for the AS OIO Approval and notifying Federation in a timely manner of any material issues or matters raised, or any conditions or other arrangements proposed, by the OIO; and

- (iv) pay any application fee required to be paid to the OIO in connection with making the application for the AS OIO Approval; and
- (b) Federation must:
  - (i) provide to AusSuper in a timely manner all information held by it and all assistance reasonably required by AusSuper to prepare and lodge any notice or application required for the AS OIO Approval; and
  - (ii) act reasonably and co-operate with AusSuper in connection with making application for and obtaining the AS OIO Approval,

provided that nothing in clauses 2.2 or 2.3 require Federation or AusSuper to accept or agree to any conditions or undertakings imposed or proposed by the OIO in respect of the AS OIO Approval (provided that both parties act reasonably when considering any such conditions or undertakings).

## **2.4 Obligations in relation to IMFC and Federation OIO Approval**

- (a) Federation must:
  - (i) prepare and lodge each notice or application required to be given by Federation or by IMFC for the purposes of obtaining that IMFC and Federation OIO Approval and take all reasonable procedural steps it is responsible for in order to apply for the IMFC and Federation OIO Approval, including responding to requests for information at the earliest practicable time, and using its reasonable endeavours to obtain such approvals as soon as practicable after the date of this agreement;
  - (ii) give AusSuper a reasonable opportunity to review an advanced draft of each notice or application and any associated materials required to be provided to the OIO for the purposes of applying for the IMFC and Federation OIO Approval (provided that any private, confidential or commercially sensitive information within such materials may be redacted) and consider in good faith any comments provided on such drafts;
  - (iii) keep AusSuper reasonably informed of progress towards obtaining IMFC and Federation OIO Approval including providing AusSuper with copies of any material correspondence to or from the OIO in relation to the application for the IMFC and Federation OIO Approval and notifying AusSuper in a timely manner of any material issues or matters raised, or any conditions or other arrangements proposed, by the OIO; and
  - (iv) pay any application fee required to be paid to the OIO in connection with making the application for the IMFC and Federation OIO Approval; and
- (b) AusSuper must:
  - (i) provide to Federation in a timely manner all information held by it and all assistance reasonably required by IMFC or Federation to prepare and lodge any notice or application required for the IMFC and Federation OIO Approval; and

- (ii) act reasonably and co-operate with AusSuper in connection with making application for and obtaining the IMFC and Federation OIO Approval,

provided that nothing in clauses 2.2 or 2.4 require IFMC, Federation or AusSuper to accept or agree to any conditions or undertakings imposed or proposed by the OIO in respect of the IMFC and Federation OIO Approval (provided that both parties act reasonably when considering any such conditions or undertakings).

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### 3 Transfer and Subscription

The parties' obligations in this clause 3 are subject to the terms and conditions of this agreement and the satisfaction or waiver of the Conditions in clause 2.1.

#### 3.1 Transfer and Subscription for Federation Shares

- (a) On the Completion Date, Federation must allot and issue, and AusSuper must subscribe for:
- (i) the Federation Shares in exchange for the transfer of the Mining Portfolio Shares to Federation; and
  - (ii) the Convertible Notes,
- with the Mining Portfolio Shares being transferred, and the Convertible Notes and the Federation Shares being issued, free of any Security Interests.
- (b) By executing this agreement, AusSuper is taken to have applied for the issue of the Federation Shares and the Convertible Notes on the terms and conditions of this agreement, the Constitution, the Convertible Note Deed and the Shareholders' Deed.

#### 3.2 Transfer of Mining Portfolio Shares

- (a) On the Completion Date, AusSuper must (or must procure the) transfer to Federation:
- (i) 28,288,639 ordinary shares in Nusantara Resources Limited (NUS.AX) (**NUS Shares**); and
  - (ii) 40,746,275 ordinary shares in OreCorp Limited (ORR.AX) (**ORR Shares**); and
  - (iii) subject to clause 3.3(c), up to 47,640,939 ordinary shares in Aurelia Metals Limited (AMI.AX) (**AMI Shares**),

(**Mining Portfolio Shares**) in exchange for the issue and allotment to AusSuper for Federation Shares which, at the time of Completion, will be equal to 49% of the issued ordinary shares in Federation (provided that if the Mining Portfolio Valuation is less than A\$37 million, the number of Federation Shares to be issued to AusSuper will be reduced in accordance with clause 3.3(d)). For the avoidance of doubt, on and from Completion, Federation is entitled to all rights attaching to the Mining Portfolio Shares including rights to receive any dividends, distributions or other benefits that are paid or that accrue to the registered holder of the Mining Portfolio Shares.

- (b) The parties acknowledge that NZ\$23 million of the Mining Portfolio Shares will be used as security for the PGF Loan in a security document in Agreed Form.

### 3.3 Mining Portfolio Valuation

- (a) The **Mining Portfolio Valuation** is the total value of the Mining Portfolio Shares based on the 20 day Volume Weighted Average Price measured as at close of trade on the day on which the last of the Conditions Precedent in clause 2.1 is satisfied or waived (or, if the date the last Condition Precedent is satisfied or waived is not a trading day, the previous trading day prior to that date).
- (b) The parties will discuss and use all reasonable endeavours to agree the Mining Portfolio Valuation on the Business Day after the satisfaction and waiver of all Conditions Precedent.
- (c) If the Mining Portfolio Valuation exceeds A\$37 million, the number of AMI Shares transferred by AusSuper to Federation will be reduced so that the Mining Portfolio Valuation is equal to A\$37 million. For the avoidance of doubt, any excess AMI Shares not transferred to Federation pursuant to this agreement will be retained by AusSuper and will not be part of the Mining Portfolio Shares.
- (d) If the Mining Portfolio Valuation is less than A\$37 million (the amount of the difference being the **Shortfall**), the number of Shares that will be issued to AusSuper at Completion will be reduced by the number of Shares equal to the Shortfall divided by the Subscription Price.

### 3.4 Pre-closing share and Constitution matters

The Warrantors must procure that immediately before Completion:

- (a) The Constitution will be adopted in the Agreed Form; and
- (b) The rights of:
- (i) 12,444,513 Shares held by IMFC; and
  - (ii) 26,222,153 Shares held by Simon Mark Le Messurier,
- will be varied into performance shares subject to the terms set out in schedule 2 of the Constitution.
- (c) Federation allots and issues to the FED Executives Share Plan Trustee:
- (i) 2,666,666 Shares; and
  - (ii) 1,333,334 performance shares,
- provided that in the period between the date of this document and Completion, Federation must consult in good faith with AusSuper (acting reasonably) in respect of material matters relating to the establishment of the FED Executives Share Plan including the establishment of the FED Executives Share Plan Trustee.

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## 4 Completion

### 4.1 Time and place for Completion

Completion will take place at the offices of Gilbert + Tobin at Level 22, 101 Collins Street, Melbourne VIC 3000 Australia at 10.00am AEST on the Completion Date, or at any other time and date that the parties agree in writing.

### 4.2 AusSuper's obligations at Completion

At Completion, AusSuper must:

- (a) deliver to Federation:
  - (i) a copy of the share transfer forms in respect of the Mining Portfolio Shares in a customary form, each duly executed by AusSuper;
  - (ii) a copy of the Convertible Note Deed duly executed by AusSuper;
  - (iii) a copy of the Escrow Account Security Deed (in the Agreed Form) duly executed by AusSuper;
  - (iv) a copy of any power of attorney under which a document required to be delivered under this agreement is executed;
  - (v) a copy of the Shareholders' Deed duly executed by AusSuper;
  - (vi) consents to act as directors of Federation from AusSuper's nominees (which will be advised to Federation not less than five Business Days prior to Completion);
- (b) pay to Federation \$15 million in Immediately Available Funds (being an amount equal to the \$50 million for the Convertible Notes less the Escrow Funds) and such amount to be paid into the bank account of Federation, the details of which are to be advised by Federation to AusSuper not later than 10 Business Days prior to Completion; and
- (c) pay the Escrow Funds into the Escrow Account (the details of which are to be advised by Federation to AusSuper not later than 10 Business Days prior to Completion) in accordance with clause 5.2 of this agreement and subject to the terms of the Escrow Account Control Deed.

### 4.3 Federation's obligations at Completion

- (a) Federation must ensure that on or before Completion the directors of Federation hold a meeting at which the directors resolve to:
  - (i) allot and issue:
    - (A) the Federation Shares to AusSuper in consideration of the Subscription Amount; and
    - (B) the Convertible Notes in accordance with the terms of the Convertible Note Deed Poll,

in each case, free of any Security Interests, and register AusSuper as the holder of the Federation Shares and Convertible Notes on and from Completion; and

- (ii) subject to receipt of appropriate consents to act, appoint the nominees of AusSuper (as notified to Federation prior to Completion) as directors of Federation in accordance with the Shareholders' Deed.
- (b) At Completion, Federation must deliver to AusSuper:
- (i) a copy of the share transfer forms in respect of the Mining Portfolio Shares in a customary form, each duly executed by Federation;
  - (ii) a duly signed copy of the minutes of meetings of the directors of Federation (or a written resolution signed by all of the directors) resolving to approve the matters referred to in clause 4.3(a);
  - (iii) an extract of its register showing that AusSuper has been registered as the holder of the Federation Shares and the Convertible Notes;
  - (iv) the Share Certificate for the Federation Shares; and
  - (v) a copy of each of the:
    - (A) Convertible Note Deed;
    - (B) Convertible Note Certificate;
    - (C) Escrow Account Security Deed (in the Agreed Form); and
    - (D) Shareholders' Deed,each duly executed by Federation and, in the case of the Shareholders' Deed, duly executed by Federation and all parties (other than AusSuper) to the Shareholders' Deed including the Warrantors; and
  - (vi) a copy of the Constitution adopted by Shareholders pursuant to clause 3.4(a).

#### 4.4 Interdependence of Completion obligations

- (a) The obligations of each party under clauses 3 (**Transfer and Subscription**), 4.2 (**AusSuper's obligations at Completion**) and 4.3 (**Federation's obligations at Completion**) are interdependent.
- (b) Unless otherwise stated, all actions required to be performed by a party at Completion are taken to have occurred simultaneously on the Completion Date.
- (c) Completion will not occur unless all of the obligations of each party under clauses 3 (**Transfer and Subscription**), 4.2 (**AusSuper's obligations at Completion**) and 4.3 (**Federation's obligations at Completion**) are complied with and fully effective.

#### 4.5 Failure by a party to Complete

- (a) If a party does not Complete when required to do so, other than as a result of default by the other party, a non-defaulting party may give the defaulting party notice requiring it to Complete within 10 Business Days of receipt of the notice.
- (b) If the defaulting party does not Complete within the period specified in clause 4.5(a), the non-defaulting party may choose either to seek specific performance or terminate this agreement.

#### 4.6 Registration of Mining Portfolio Shares

AusSuper and Federation must, prior to and following Completion, use all reasonable endeavours to ensure that Federation:

- (i) is registered as the holder of the Mining Portfolio Shares; and
- (ii) receives a holdings statement in respect of the Mining Portfolio Shares,

as soon as practicable following Completion. From Completion until such time as Federation is registered as the holder of the Mining Portfolio Shares, AusSuper appoints Federation as its attorney to exercise all rights and powers in relation to the Mining Portfolio Shares including any voting rights. If, on or after Completion, AusSuper receives any dividends, distributions or other benefits in respect of the Mining Portfolio Shares, it must as soon as practicable after such receipt transfer such dividends, distributions or other benefits to Federation.

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## 5 Escrow

### 5.1 Escrow Account

- (a) Prior to Completion, AusSuper and Federation will work together in good faith and each acting reasonably to:
  - (i) establish an interest bearing bank account in the name of Federation with the Escrow Bank to hold the Escrow Funds (only) in accordance with this agreement and appoint representatives of each of Federation and AusSuper as joint signatories to that account (**Escrow Account**). Any dealing or withdrawal from the Escrow Account will require joint approval by:
    - (A) the representatives from AusSuper, acting jointly; and
    - (B) the representative from Federation;
  - (ii) execute the Escrow Account Control Deed, and procure the execution of such agreement by the Escrow Bank, in the Agreed Form and deliver a copy of that duly executed deed to each other and to the Escrow Bank;
  - (iii) settle an Agreed Form of the Escrow Account Security Deed; and
  - (iv) procure the appointment of the persons listed in clause 5.1(b) as the initial nominated representatives for the Escrow Account.

- (b) Each of AusSuper and Federation must, at all times until the Escrow Account Balance is nil, have a nominated representative for the purpose of executing withdrawals, dealings and other notices in relation to the Escrow Account in accordance with this agreement and the Escrow Account Control Deed. The initial nominated representatives are:
- (i) Mark Le Messurier as the nominated representative for Federation;
  - (ii) Shaun Manuell and Marilyn Mather jointly as the nominated representative of AusSuper.

Each party may change its nominated representative from time to time by written notice to the other party.

- (c) Each party must cause their respective relevant nominated representatives to do all things required of the party under this clause 5 and under the Escrow Account Control Deed.

## **5.2 Transfer and Payment to Escrow Account**

On Completion, AusSuper must pay the Escrow Funds in Immediately Available Funds to the Escrow Account in accordance with this agreement.

## **5.3 Transfer and Payment from Escrow Account**

Subject to clause 7.14, no Escrow Funds may be paid out of the Escrow Account or otherwise dealt with except on the joint written direction of Federation and AusSuper to the Escrow Bank in accordance with this deed or otherwise as agreed between AusSuper and Federation.

## **5.4 Notice of Escrow Claims**

- (a) AusSuper must, in respect of each Escrow Claim (if any) when providing notice to Federation of the Claim, provide to Federation:
- (i) an estimate in a single dollar amount of the amount of that Escrow Claim based on the facts, matters or circumstances relating to the Unagreed Escrow Claim which are then known to AusSuper (**Escrow Claimed Amount**); and
  - (ii) a notice setting out the particulars and basis for the estimate based on the information then available to AusSuper in respect of the facts, matters or circumstances relating to the Escrow Claim.
- (b) AusSuper must act in good faith and reasonably in providing the estimate and information under clause 5.4(a).

## **5.5 Agreed Claims**

If an Escrow Claim becomes an Agreed Claim (which, for the avoidance of doubt, may occur at any time before or after the Escrow Payment Date), Federation and AusSuper must, on the next Business Day, direct the Escrow Bank to pay to AusSuper from the Escrow Account the Agreed Claim Amount up to the extent of the Escrow Account Balance (provided that such Agreed Claim Amount is satisfied in accordance with clause 7.14).

## **5.6 Transfers and Payment at the Escrow Payment Date**

- (a) On the next Business Day after the Escrow Payment Date, Federation and AusSuper must direct the Escrow Bank to pay to Federation by way of Escrow Funds an amount equal to the Escrow Account Balance less the aggregate amount of all Escrow Claimed Amounts applicable to such Unagreed Escrow Claims (if any) as at the Escrow Payment Date.
- (b) If at any time following the Escrow Payment Date:
  - (i) an Escrow Claimed Amount becomes an Agreed Claim Amount for an amount less than the applicable Escrow Claimed Amount;
  - (ii) an Unagreed Escrow Claim is withdrawn in writing by AusSuper; or
  - (iii) it is agreed or finally determined by a court of competent jurisdiction after all avenues of appeal have been exhausted, waived or not exercised that an Unagreed Escrow Claim, is not, or has ceased to be, valid or enforceable against the Warrantors,

then, on the next Business Day, AusSuper and Federation must direct the Escrow Bank to pay to Federation from the Escrow Account an amount in Escrow Funds equal to:

- (iv) in the case of clause 5.6(b)(i), the difference between the relevant Escrow Claimed Amount and the relevant Agreed Claim Amount; or
- (v) in the case of clause 5.6(b)(ii) and 5.6(b)(iii), the relevant Escrow Claimed Amount.

## **5.7 Dividends or Interest on Escrow Account Balance**

Interest which accrues on the Escrow Account Balance (together with any interest accruing on amounts credited to the account as interest), is for the benefit of Federation. If Federation gives a written notice to AusSuper requesting that the amount of the interest be paid to Federation, AusSuper (together with Federation) must procure that amounts actually credited to the Escrow Account by way of interest are released from the Escrow Account and paid Federation from time to time, including at the time any payments or transfers are made to Federation in respect of that account under clause 5.6.

## **5.8 Escrow Funds and Escrow Shares**

Subject to compliance with the provisions of clause 7.14, Federation may determine whether Escrow Funds or Escrow Shares (and in what proportion) are used to satisfy any Agreed Claim Amount or any payment or transfer to be made to Federation in accordance with this clause 5 (as the case may be).

## **5.9 Inconsistency**

To the extent of any inconsistency between this agreement and the Escrow Account Control Deed, the terms of this agreement prevail in respect of the Escrow Funds.

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## 6 Interim Funding

- (a) The parties acknowledge that, in the period between signing of this agreement and Completion, IMFC (or its related body corporate) and Mark Le Messurier (or an entity controlled by him) may each, at their discretion, advance unsecured loans to Federation and/or Tasman Mining to advance the Blackwater Mining Project (**Interim Funding**). The Interim Funding must be referable to items in the budget provided to AusSuper prior to execution of this agreement or otherwise agreed with AusSuper for these purposes (or otherwise agreed with AusSuper in writing).
- (b) The Warrantors confirm that such Interim Funding is, as at the date of this agreement, not expected to exceed \$500,000. If the Interim Funding will exceed \$500,000, the Warrantors must seek the prior written consent of AusSuper (not to be unreasonably withheld).
- (c) Federation must repay the Interim Funding at, or immediately following, Completion.

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## 7 Warrantor Warranties

### 7.1 Warrantor Warranties

- (a) Each Warrantor represents and warrants to AusSuper that each of the Warrantor Warranties is true and accurate as at the date of this agreement and on Completion (unless otherwise specified).
- (b) Each Warrantor Warranty must be construed independently and is not limited by reference to another Warrantor Warranty.
- (c) AusSuper may not make any Claim against Federation for breach, or otherwise in relation to, the Warrantor Warranties (including in relation to the subject matter of the Warrantor Warranties), except as set out in this clause 7 and under clause 10.1(c) of Schedule 3 of the Convertible Note Deed.
- (d) The Warrantor Warranties survive Completion.

### 7.2 Matters disclosed

The Warrantor Warranties (other than the Warranties contained in paragraphs (a), (b), (c), (d) and (e) of Schedule 4) are given subject to and are qualified by, and the liability of the Warrantors in respect of any breach of any Warrantor Warranty will be reduced or extinguished (as the case may be) to the extent that the breach arises in connection with:

- (a) the transactions contemplated by or authorised by this agreement or the Convertible Note Deed;
- (b) any matters or information which has been fairly disclosed in the Disclosure Materials by the Warrantors to AusSuper prior to execution of this agreement;

- For personal use only
- (c) anything within the actual knowledge of Luke Smith, Jill Charles and Lun Zhang who has been involved in the assessment and/or negotiation of the transactions contemplated by this agreement or the Convertible Note Deed; or
  - (d) any information or matters that would have been disclosed to AusSuper had AusSuper conducted searches by electronic means in the name of Federation and Tasman Mining on the date which is three Business Days before the date of this agreement of records open to public inspection maintained by the Australian Securities and Investments Commission and the New Zealand Companies Office.

### 7.3 Minimum amount of Claims

Neither Warrantor is liable for any Claim under or in connection with this agreement unless and until:

- (a) the amount finally agreed or determined to be payable in respect of that Claim exceeds \$30,000 (each such Claim, a **Permitted Claim**); and
- (b) the aggregate amount of all such Permitted Claims exceeds \$300,000,

in which event, the Warrantors are liable for the full aggregate amount of the Permitted Claims and not merely the amount which exceeds \$30,000 or \$300,000, respectively.

### 7.4 Maximum liability

- (a) Subject to clause 7.16, the Warrantors' maximum several liability for Loss in respect of all Claims under or in connection with this agreement is limited to:
  - (i) for Federation, \$50 million subject to the limitations in clause 7.4(b); and
  - (ii) for Mark Le Messurier, \$1.5 million; and
  - (iii) for IMFC, \$1.5 million,
- (b) The Warrantors' maximum liability for Loss in respect of Claims for:
  - (i) subject to clause 7.4(b)(ii), breach of a Warrantor Warranty is limited to \$15 million (in aggregate); and
  - (ii) breach of a Warrantor Warranty contained in paragraphs (a), (b), (c), (d) and (e) of Schedule 4, is limited to \$50 million (in aggregate),subject at all times to clause 7.4(a).

### 7.5 Notice and time limits on Claims

- (a) AusSuper must notify the Warrantors of any Claim it has against the Warrantors under this agreement (including any Claim for breach of any Warrantor Warranty), or under clause 10 of the Convertible Note Deed for a material breach of the warranties given in this agreement setting out reasonable details of the facts, matters or circumstances giving rise to the breach and the nature of the breach as soon as practicable, and in any event within 10 Business Days, after it becomes aware of it.
- (b) AusSuper may not make, and the Warrantors are not liable for any, Claim for a breach of this agreement (including any Claim for breach of any Warrantor Warranty) or under clause 10 of the Convertible Note Deed for a material breach of

the warranties given in this agreement unless material details of the Claim have been notified to the Warrantors by the date that is 12 months after the Completion Date, provided that Federation has conducted an audit of its financial statements prior to that date. If Federation has not conducted an audit of its financial statements by that time, the time limit for Claims will be extended to the date one month after the date on which Federation has conducted an audit of its financial statements and provided to AusSuper the audited financial statements (or a report outlining the outcome of that audit).

- (c) A Claim for a breach of this agreement (including any Claim for a breach of any Warrantor Warranty) or under clause 10 of the Convertible Note deed for a material breach of the warranties given in this agreement will not be enforceable against the Warrantors and is to be taken for all purposes to have been withdrawn unless legal proceedings in connection with the Claim are commenced within 6 months after AusSuper serves written notice of the Claim on the Warrantors in accordance with clause 7.5(a).

## **7.6 Reliance and acknowledgement**

- (a) The Warrantors acknowledge that AusSuper has entered into this agreement in reliance on the Warrantor Warranties.
- (b) AusSuper acknowledges, and represents and warrants to the Warrantors, that:
  - (i) in conducting its due diligence and in entering into this agreement and the Convertible Note Deed, and proceeding to Completion, it did not rely and is not relying on any statement, representation, warranty, forecast, opinion or statement of belief made by or on behalf of the Warrantor or on any other conduct engaged in by the Warrantors, other than the Warrantor Warranties;
  - (ii) it understands the risks and uncertainties of the industry in which the business of Federation operates and the general economic, regulatory and other risks that impact on or could impact on Federation's business, its results, operations, financial position and prospects;
  - (iii) any estimates, budgets or forecasts made, or opinion expressed, in relation to the financial position or prospects of Federation and/or the business of Federation (whether written or oral) were made or expressed to and accepted by AusSuper, and this agreement is entered into, on the basis and condition that, except as provided for in the Warrantor Warranties:
    - (A) neither the Warrantors nor their representatives have made nor makes any representation or warranty as to the accuracy or completeness of such estimate, budget, forecast or expression of opinion or that any such estimate, budget, forecast or expression of opinion will be achieved; and
    - (B) neither the Warrantors nor their representatives will be liable to AusSuper or its representatives in the event that, for whatever reason, such estimate, budget, forecast or expression of opinion is or becomes inaccurate, incomplete or misleading in any respect.

## 7.7 No liability

The Warrantors are not liable to AusSuper for any Claim or Loss under this agreement:

- (a) to the extent that a provision or reserve in relation to the facts, matters, circumstances, Taxes or Duties giving rise to the Claim or Loss has been specifically provided for or taken into account or noted in the accounting information listed in section 3 of the disclosure letter referred to in the definition of Disclosure Materials;
- (b) to the extent that the Claim or Loss would not have arisen but for anything done or not done after Completion by AusSuper or any person acting, or purporting to act, on behalf of AusSuper including because of a Tax or Duty-related profile, attribute or similar circumstance of AusSuper;
- (c) to the extent that the Claim or the Loss would not have arisen but for:
  - (i) the enactment or amendment of any legislation or regulations;
  - (ii) a change in the judicial or administrative interpretation of the law; or
  - (iii) a change in the practice or policy of any Government Agency,after the date of this agreement, including legislation, regulations, amendments, interpretation, practice or policy that has a retrospective effect;
- (d) to the extent that the Claim or Loss would not have arisen but for some act, omission, transaction or arrangement carried out at the written request or with the written approval of AusSuper or its agents, employees or advisers before Completion; or
- (e) if the liability for that Claim or Loss is a contingent liability, prospective, not ascertainable or unascertainable, unless and until the liability is an actual liability and is due and payable.

## 7.8 Tax, Duty or other benefit

In calculating the Loss of AusSuper in relation to a Claim, the Loss must be reduced by any benefit (including any Tax Relief) obtainable by AusSuper arising directly or indirectly from the subject matter of that Claim.

## 7.9 Exclusion of warranties and statutory actions

AusSuper agrees that:

- (a) subject to any law to the contrary and except as provided in the Warrantor Warranties, all guarantees, warranties, representations or other terms and conditions relating to this agreement or the Convertible Note Deed or their respective subject matter (whether express, implied, written, oral, collateral, statutory or otherwise), not expressly contained in this agreement or the Convertible Note Deed, are excluded to the maximum extent permitted by law and, to the extent that they cannot be excluded, the Warrantors disclaim all liability in relation to them to the maximum extent permitted by law; and
- (b) to the maximum extent permitted by law, AusSuper will not make and waives any right it may have to make any Claim against the Warrantors under the Australian Consumer Law (including sections 4, 18 and 29 of the Australian Consumer Law),

the Corporations Act (including section 1041H of that Act), the *Australian Securities and Investments Commission Act 2001* (Cth) or the corresponding provision of any other federal, state or territory legislation, or a similar provision under any applicable law, for any act or omission concerning the transactions contemplated by this agreement or the Convertible Note Deed or for any statement or representation concerning any of those things.

To the extent that any of the matters in clauses 7.9(a) and 7.9(b) cannot be excluded or disclaimed, AusSuper covenants that any Claim in relation to such matters made will be on the basis that, to the extent permitted by law, the maximum amount that AusSuper may recover from the Warrantors and from Federation is \$1.00.

#### **7.10 No double recovery**

AusSuper is not entitled to recover or obtain payment, reimbursement, restitution or indemnity in respect of any Loss under or in connection with this agreement or the Convertible Note Deed, where AusSuper has already recovered the full amount of that Loss.

#### **7.11 Insured Claim or loss**

- (a) Subject to clause 7.11(b), AusSuper's Claim under or in relation to or arising out of this agreement (including a breach of any Warrantor Warranty) or the Convertible Note Deed will be reduced by the amount of any insurance payment received by AusSuper in respect of that Claim, less any litigation or other costs (including tax) directly or indirectly related to the collection of such amount.
- (b) AusSuper must take all reasonable steps to recover the maximum possible amount available under insurance in respect of any Claim brought in relation to or arising out of this agreement (including for breach of any Warrantor Warranty) or the Convertible Note Deed.

#### **7.12 Mitigation of Loss**

Each party is under a duty to mitigate its Loss in relation to any Claim and the Warrantor's liability in respect of any breach of this agreement (including breach of any Warrantor Warranty) will be reduced or extinguished (as the case may be) to the extent that AusSuper has failed to mitigate its Loss.

#### **7.13 Independent limitations**

Each qualification and limitation in this clause 7 is to be construed independently of the others and is not limited by any other qualification or limitation.

#### **7.14 Remedies**

- (a) Any agreed or court-ordered Loss or damage arising in respect of any Claim for breach of Warrantor Warranty against a Warrantor must be satisfied in the following order:
  - (i) to the extent available under the terms of the security arrangements in respect of the PGF Loan described in clause 3.2(b), transfer of part or all of the Escrow Shares free from any Security Interest, or payment up to \$12 million from the Escrow Funds, to AusSuper;

- For personal use only
- (ii) if (i) is not sufficient or available to satisfy the Claim, transfer of up to \$3 million in cash from Simon Mark Le Messurier and IMFC (in aggregate) to AusSuper; and
  - (iii) if (i) and (ii) are not sufficient or available to satisfy the Claim, transfer of the remaining Escrow Shares and payment of the remaining Escrow Funds up to the Escrow Account Balance from Federation to AusSuper; and
  - (iv) if (i), (ii) or (iii) are not sufficient or available to satisfy the Claim, AusSuper may make a Claim against Federation provided that the aggregate liability of Federation does not exceed the amount set out in clause 7.4.
- (b) For the avoidance of doubt, if:
- (i) all of the Escrow Shares have been transferred;
  - (ii) all of the Escrow Funds have been paid; and
  - (iii) Simon Mark Le Messurier and IMFC have paid (in aggregate) \$3 million,
- to AusSuper in respect of Claims under this agreement, then no further amounts will be payable to AusSuper by the Warrantors under or in connection with this agreement except as contemplated by clause 7.14(a)(iv) above.
- (c) AusSuper may not rescind, terminate or revoke this agreement if any of the Warrantor Warranties are incorrect or untrue.

#### **7.15 No limitations for fraud**

The limitations in this clause 7 shall not apply to the extent of any fraud or fraudulent misrepresentations of the Warrantors.

#### **7.16 Warrantor liability**

Notwithstanding any other provision of this agreement:

- (a) the liability of the Warrantors under or in connection with this agreement or the Convertible Note Deed, including any representation, obligation, covenant, undertaking, warranty or indemnity under this agreement or the Convertible Note Deed is imposed severally on the Warrantors (not jointly and not joint and severally); and
- (b) no Warrantor is liable for any liability arising from the breach of this agreement by any other Warrantor.

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## **8 AusSuper Warranties**

### **8.1 AusSuper Warranties**

- (a) AusSuper warrants to Federation and each Warrantor that each of the AusSuper Warranties is true and accurate as at the date of this agreement, and will be true and accurate as at the date of this agreement and on Completion (unless otherwise specified).

- For personal use only
- (b) AusSuper acknowledges that Federation and each Warrantor has entered into this agreement in reliance on the AusSuper Warranties.
  - (c) Each AusSuper Warranty must be construed independently and is not limited by reference to another AusSuper Warranty.
  - (d) The AusSuper Warranties survive Completion.

## **8.2 Limitation on AusSuper's liability**

Notwithstanding any other provision of this agreement and the Convertible Note Deed, the parties (other than AusSuper) acknowledge and agree that:

- (a) AustralianSuper Pty Ltd enters into and performs this agreement and the Convertible Note Deed and the transactions contemplate by each in its capacity as the trustee of the AustralianSuper superannuation fund and in no other capacity. This applies also in respect of any past and future conduct (including omissions) relating to this agreement and the Convertible Note Deed or those transactions;
- (b) AustralianSuper Pty Ltd is not liable to pay or satisfy any of its obligations under and in connection with this agreement and the Convertible Note Deed and those transactions and will have no liability to the other parties except to the extent of AustralianSuper Pty Ltd's right of indemnity out of the assets of the Fund;
- (c) if those assets are insufficient, the other parties will not seek to recover any shortfall by bringing proceedings against AustralianSuper Pty Ltd personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to AustralianSuper Pty Ltd or prove in any liquidation, administration or arrangement of or affecting AustralianSuper Pty Ltd; and
- (d) each other party waives its rights and releases AustralianSuper Pty Ltd from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the Fund.
- (e) The limitation on AustralianSuper Pty Ltd's liability referred to in this clause 8.2 will not apply to the extent that AustralianSuper Pty Ltd's right of indemnity from the Fund is reduced or lost as a result of liability for breach of trust where AustralianSuper Pty Ltd has:
  - (i) failed to act honestly in a matter concerning the Fund; or
  - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the AustralianSuper Pty Ltd was required to exercise.

## **8.3 Maximum liability of AusSuper**

Notwithstanding anything in this document, the Shareholders' Deed or the Convertible Note Deed, the maximum aggregate liability of AusSuper for any Claims arising in respect of the foregoing documents is limited to the value of the Mining Portfolio Shares.

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## 9 Guarantee

- (a) The Guarantor unconditionally and irrevocably guarantees to AusSuper the due and punctual performance by IMFC of all IMFC's obligations under this agreement, including any obligation to pay money under this agreement (**Guaranteed Obligations**)
- (b) If IMFC fails to perform the Guaranteed Obligations in full and on time, the Guarantor must comply with the Guaranteed Obligations on demand from AusSuper. A demand may be made whether or not AusSuper has made demand on IMFC.
- (c) The Guarantor is responsible to AusSuper in respect of the Guaranteed Obligations in the same manner as if the Guarantor were IMFC under this agreement, and the Guarantor indemnifies AusSuper against any Loss arising from IMFC failing to comply with its obligations under this agreement (including an obligation to pay money) or being unable to comply with its obligations (due to a breach of trust deed or any other constituent document binding IMFC). For the avoidance of doubt, the Guarantor's liability is several only (not joint) and the maximum several liability of the Guarantor in respect of all Claims under or in connection with this agreement is limited to the amount set out in clause 7.4(a)(iii).
- (d) The rights given to AusSuper under this Guarantee, and the Guarantors liability under it, is not affected by any act, omission or other thing which might otherwise affect it in law or in equity including one or more of the following:
  - (i) an Insolvency Event affecting IMFC;
  - (ii) a partial performance of the Guaranteed Obligations;
  - (iii) the Guaranteed Obligations not being enforceable at any time against IMFC; or
  - (iv) AusSuper granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing IMFC of an obligation.
- (e) The Guarantor waives any right it has of first requiring AusSuper to commence proceedings or enforce any other right against IMFC or any other person before claiming from the Guarantors under this Guarantee.

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## 10 Confidentiality

A party may not disclose the provisions of this agreement or information about another party, or confidential information about the Federation or its business, except:

- (a) after getting the written consent of the party to which the information relates;
- (b) to an Officer, employee, professional adviser, consultant or financier who needs to know such information in the conduct of his duties; or

- (c) as required by an applicable law, legal process, any order or rule of any Government Agency or the rules of a recognised stock exchange, after first consulting with the other parties, about the form and content of the disclosure,

and must use its best endeavours to ensure all permitted disclosures are kept confidential.

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## 11 GST

- (a) Any consideration or amount payable under this agreement, including any non-monetary consideration (as reduced in accordance with clause 11(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount (**Additional Amount**) is payable by the party providing the Consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply by the party making the Supply (**Supplier**) in accordance with the GST Law. This clause does not apply to the extent that the Consideration for the Supply is expressly stated to include GST or the Supply is subject to a reverse-charge.
- (c) The Additional Amount payable under clause 11(b) is payable at the same time and in the same manner as the Consideration for the Supply but is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 11(b):
- (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 10 Business Days after becoming aware of the variation to the amount of GST payable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 10 Business Days after becoming aware of the occurrence of the Adjustment Event.
- (e) Notwithstanding any other provision in this agreement, if an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (Amount Incurred), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes, without limitation, an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a Member is entitled.

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## 12 Notices

### 12.1 Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an authorised representative of the sender; and
- (c) marked for the attention of the person identified set out opposite the party's name in Schedule 2.

### 12.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 12.1. However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

### 12.3 Delivery

Communications must be:

- (a) left at the address set out opposite the party's name in Schedule 2;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out opposite the party's name in Schedule 2; or
- (c) sent by email to the address set out opposite the party's name in Schedule 2.

However, if the intended recipient has notified a changed address or email address, then communications must be to that address or email address.

### 12.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent overseas); or
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) four hours after 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,

whichever happens first.

## **12.5 Receipt outside business hours**

Despite clauses 12.4, if communications are received or taken to be received under clause 12.4 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

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# **13 General**

## **13.1 Governing law and Jurisdiction**

- (a) The laws of Victoria, Australia govern this agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## **13.2 Costs and expenses**

Each party must pay its own costs and expenses of negotiating, preparing, signing, delivering, registering and performing its obligations under this agreement and any other agreement or document entered into or signed under this agreement.

## **13.3 Stamp duty**

- (a) Subject to clause 13.3(b), all stamp duty and transfer taxes (including fines, penalties and interest) which may be payable on or in connection with this agreement and any instrument executed under or in connection with, or any transaction evidenced by the agreement, is payable by Federation.
- (b) For the avoidance of doubt, the operation of this clause 13.3 does not extend to any income or capital gains tax (or other similar taxes) payable by AusSuper including in respect of the sale of the Mining Portfolio Shares to Federation and the transfer, conversion or redemption of the Convertible Notes.

## **13.4 Residency**

AusSuper makes a declaration under section 14-225 of Schedule 1 of the Taxation Administration Act 1953 (Cth) that it is, and will be, an Australian resident (as defined under the Income Tax Assessment Act 1997 (Cth)) from the date of this agreement up to and including Completion.

## **13.5 Variation and waiver**

- (a) No variation of this agreement is effective unless made in writing and signed by each party.
- (b) A provision of this agreement, or a right created under it, may not be waived except in writing and signed by the party giving the waiver.

### 13.6 Invalidity

- (a) If a provision of this agreement or a right or remedy of a party under this agreement is invalid or unenforceable in a particular jurisdiction:
  - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
  - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this agreement in relation to severability, prohibition or enforceability.

### 13.7 Assignment

Except as otherwise set out in this agreement, neither party may only assign its rights and obligations under this agreement with the prior written agreement of the other party to this agreement.

### 13.8 Cumulative rights

Except as expressly provided in this agreement, the rights of a party under this agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

### 13.9 Severability

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this agreement is not affected.

### 13.10 Further steps

Each party agrees, at its own expense, to do anything reasonably requested by another party to give effect to the provisions of this agreement and the transactions contemplated by it.

### 13.11 Effect of termination

- (a) A termination of this deed will not affect any other rights the parties have against one another at law or in equity.
- (b) On termination of this deed:
  - (i) each party is released from its obligations under this agreement other than the clause 9 (Guarantee) 10 (Confidentiality), 12 (**Notices**) and this clause 13 (**General**) survive termination or expiry of this agreement; and
  - (ii) each party retains any rights it has against any other party in connection with any right or Claim which arises before termination.
- (c) No term of this agreement merges on completion of any transaction contemplated by this agreement..

### **13.12 Entire agreement**

This agreement and the Convertible Note Deed constitutes the entire agreements of the parties about the subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

### **13.13 Counterparts**

This agreement may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed is the date of the agreement.

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## Schedule 1 Dictionary

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### 1 Dictionary

In this agreement:

**Agreed Claim** means any Escrow Claim which has been resolved by:

- (a) the Warrantors and AusSuper agreeing the amount due to AusSuper in respect of each Escrow Claim; or
- (b) a court of competent jurisdiction making a final order against the Warrantors after all avenues of appeal have been exhausted, waived or not exercised in respect of the subject matter of the Escrow Claim, in liquidated amount.

**Agreed Claim Amount** means the amount agreed or determined as payable to AusSuper pursuant to an Agreed Claim.

**Agreed Form** means a document in a form agreed by Federation and AusSuper (and initialled or otherwise acknowledged as such by exchange of emails between them) as at the date of this agreement (or in the case of the Escrow Account Control Deed and Escrow Account Security Deed as at the date such documents are agreed).

**AS OIO Approval** has the meaning given to it in clause 2.1(a).

**ASX** means Australian Stock Exchange.

**AusSuper Warranties** means the representations and warranties set out in clause 8.

**Blackwater Mining Project** means the project to investigate recommencing mining in the Blackwater project area which is the subject of the Project Deed between Tasman Mining Limited and Oceana Gold (New Zealand) Limited dated 3 July 2018 (as amended).

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays or public holidays in Melbourne, Victoria.

**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.

**Completion** means the completion of the issue and allotment of the Federation Shares in accordance with this agreement and Convertible Notes under the Convertible Note Deed, and **Complete** has a corresponding meaning.

**Completion Date** means the date 5 Business Days after satisfaction or waiver of the Conditions (provided that if the Escrow Account has not been established, the Escrow Account Control Deed has not been executed or the Escrow Account Security Deed is not in Agreed Form by such date, the Completion Date will be as soon as practicable following the establishment of the Escrow Account, the execution of the Escrow Account Control Deed and agreement of the Escrow Account Security Deed).

**Conditions** means a condition precedent set out in clause 2.1.

**Conditions Precedent Date** has the meaning given to it in clause 2.2(a)(i).

**Constitution** means the constitution in Agreed Form.

**Convertible Notes** means the 58,823,528 convertible notes to be issued under the Convertible Note Deed.

**Convertible Note Certificate** means a certificate in the form set out in Attachment A of the Convertible Note Deed.

**Convertible Note Deed** means the deed to be executed by Federation and AusSuper and delivered to each other at Completion and under which the Convertible Notes are issued in the Agreed Form.

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

**Disclosure Materials** means the written information relating to Federation provided to AusSuper by the Warrantors and/or Federation prior to the date of this agreement in:

- (a) this agreement;
- (b) the Shareholders' Deed;
- (c) the Convertible Note Deed;
- (d) the documents listed in the letter referred to in paragraph (e) of this definition; or
- (e) a letter dated on or before the date of this agreement addressed and given by the Warrantors to AusSuper on or before the date of this agreement disclosing facts, matters or circumstances that are, or may be, inconsistent with the Warranties, together with the attachments (if any) to that letter.

**Dollars, A\$ and \$** means the lawful currency of Australia.

**Escrow Account** has the meaning given to it in clause 5.1(a)(i).

**Escrow Account Balance** means at the relevant time and from time to time the amount credited to the Escrow Account.

**Escrow Account Control Deed** means the account control deed to be agreed and executed by the Escrow Bank, AusSuper and Federation in relation to the Escrow Account.

**Escrow Account Security Deed** means the security deed to be agreed and executed by AusSuper and Federation in relation to the Escrow Account.

**Escrow Bank** means St. George Bank or such other financial institution as may be agreed between Federation and AusSuper.

**Escrow Claim** means a Claim made by AusSuper against the Warrantors in respect of a breach of Warrantor's Warranty or under an Indemnity which has been notified to the Warrantors by AusSuper on or before the Escrow Payment Date in accordance with the procedure set out in clause 7.5.

**Escrow Claimed Amount** has the meaning given to it in clause 5.4(a)(i).

**Escrow Funds** means \$35 million cash from AusSuper's subscription for the Convertible Notes.

**Escrow Payment Date** means the date which is 12 months after the Completion Date or, if Federation has not conducted an audit of its financial statements by that time, such date will be extended to the date one month after the date on which Federation has conducted an audit of its financial statements and provided to AusSuper the audited financial statements (or a report outlining the outcome of that audit).

**Escrow Shares** means such number of Mining Portfolio Shares equal to \$12 million in value on the Completion Date and made up of equal portions of NUS Shares, ORE Shares and AMI Shares.

**Federation Shares** means the number of Shares issued under this agreement, being:

- (a) 42,274,510; or
- (b) if on Completion, the Mining Portfolio Valuation is less than A\$37 million, the number of Shares that is equal to 42,274,510 less the (Shortfall divided by the Subscription Price).

**FED Executives Share Plan Trustee** means FED Share Plan Pty Ltd (ACN 642 919 953) as trustee for the FED Executives Share Plan Trust.

**FED Founders** means Messrs James Askew (or IMFC), Mark Le Messurier, Bob Vassie, Bruce Higson-Smith, Simon Delander and Nigel Slonker (or their nominees).

**Government Agency** means a government or any governmental, semi-governmental, legislative, administrative, fiscal, quasi-judicial or judicial entity, authority, department or other body (including any self-regulatory organisation established under statute or any stock exchange) whether in Australia, New Zealand or otherwise.

**Group** means Federation and Tasman Mining and each of them is a **Group Company**.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law.

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) or the Goods and Services Tax Act 1985 (NZ), as applicable.

**Guarantee** means the guarantee in clause 9

**Guaranteed Obligations** has the meaning given to it in clause 9.

**IMFC and Federation OIO Approval** has the meaning given to it in clause 2.1(b).

**Immediately Available Funds** means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any person (**Insolvent Party**):

- (a) it is, or states that it is, unable to pay all of its debts as and when they become due and payable, or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) an application or order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution, of the Insolvent Party, and the application is not dismissed, the order is

not set aside or the resolution is not withdrawn (as applicable) within 15 Business Days;

- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Insolvent Party or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 15 Business Days;
- (d) a controller (as defined in the Corporations Act) is appointed in respect of substantially all of the property of the Insolvent Party;
- (e) it enters into an arrangement (including a deed of company arrangement or creditors scheme of arrangement) or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, or is protected from creditors under any statute (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (i) it becomes an Insolvent under Administration under the Corporations Act or action is taken which could result in that event;
- (j) it is deregistered under the Corporations Act;
- (k) a distress, attachment or execution is levied or becomes enforceable against substantially all of the property of the Insolvent Party;
- (l) it ceases to carry on business or threatens to do so; or
- (m) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above clauses of this definition.

**Interest Rate** means the daily buying rate displayed at or about 10.30am (Sydney time) on the Reuters screen BBSW page for Australian bank bills of a three month duration.

**Loss** includes losses, liabilities, damages, costs, charges, expenses, fines, penalties and Taxes.

**Mining Portfolio Shares** has the meaning given to it in clause 3.2.

**Mining Portfolio Valuation** has the meaning given to it in clause 3.3.

**Officer** means, in relation to a body corporate, a director or secretary of that body corporate.

**OIO** means New Zealand Overseas Investment Office.

**PGF** has the meaning give to it in clause 2.1(c)(i).

**PGF Loan** has the meaning given to it in clause 2.1(c)(i).

**PGF Loan Agreement** has the meaning given to it in clause 2.1(c)(i).

**PPS Act** means the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Act 1999* (NZ).

**PPS Law** means:

- (a) the PPS Act;
- (b) any regulations made at any time under the PPS Act;
- (c) any legislative instrument made at any time under the PPS Act;
- (d) any amendment to any of the above, made at any time; or
- (e) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in paragraphs (a) to (d).

**PPS Security Interest** means a security interest as defined in the PPS Act.

**Security Interest** means:

- (a) any third party rights or interests including a mortgage, bill of sale, charge, lien, pledge, trust, encumbrance, overriding royalty, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements or any arrangement having a similar effect; and
- (b) a PPS Security Interest,

and includes any agreement to create any of them or allow them to exist.

**Share** means an ordinary share in the capital of the Federation.

**Share Certificate** means a certificate which certifies that the person named in the certificate is entitled to the number of Shares stated in the certificate.

**Shareholders' Deed** means the shareholders' deed between the Company, the Noteholder and the Shareholders in the Agreed Form.

**Shortfall** has the meaning given to it under clause 3.3(d).

**Subscription Price** means \$0.85 for each Federation Share.

**Tax** means:

- (a) any tax, levy, charge (including the superannuation guarantee charge), impost, fee, excise, royalty, deduction, superannuation, compulsory loan or withholding, which is assessed, levied, imposed or collected pursuant to any law or by any tax authority;
- (b) stamp, transaction or registration duty or similar charge, GST, VAT or sales tax; and
- (c) any interest, fine, penalty, charge, fee or any other amount assessed,

charged or imposed by a Government Agency on or in respect of any of the above.

**Tax Act** means the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) or the Taxation Administration Act 1953 (Cth), as the context requires and as amended from time to time.

**Tax Law** means a law in any jurisdiction with respect or, or imposing any, Tax.

**Tax Relief** means any relief, allowance, exemption, exclusion, set-off, deduction, loss, rebate, refund, right to repayment or credit granted or available in respect of a Tax under any law.

**Tax Return** means any return relating to Tax including any document which must be lodged with a Government Agency administering a Tax or which a taxpayer must prepare and retain under a Tax Law (such as an activity statement, amended return, application, schedule or election and any attachment)

**Tasman Mining** means Tasman Mining Limited 6776118 NZBN 9429046687173 of Level 10 Otago House, 477 Moray Place, Dunedin 9016 New Zealand.

**Unagreed Escrow Claim** means an Escrow Claim that is not an Agreed Claim.

**Volume Weighted Average Price** means the volume weighted average price of the relevant shares sold during the relevant period on the trading system operated by ASX excluding any sales otherwise than in the ordinary course of trading on either exchange (which include but are not limited to transactions defined in the ASX Operating Rules as 'special crossings', crossings prior to the commencement of normal trading, crossings during the close phase or after the after-hours adjust phase, crossings during overnight trading, overseas trades and trades pursuant to the exercise of options over Shares) and any sales which Federation and AusSuper agree should be excluded on the basis that they may not be fairly reflective of genuine supply and demand.

**Warranties** means the Warrantor Warranties and the AusSuper Warranties.

**Warrantor Warranties** means the representations and warranties set out in Schedule 4.

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## 2 Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears.

- (a) headings are for convenience only and do not affect the interpretation of this agreement.
- (b) the singular includes the plural and vice versa.
- (c) words that are gender neutral or gender specific include each gender.
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.

- (f) a reference to:
- (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
  - (vi) this agreement includes all schedules and attachments to it;
  - (vii) a law includes:
    - (A) any constitutional provision, treaty, decree, statute, regulation, by-law, ordinance or instrument;
    - (B) any order, direction, determination, approval, requirement, licence or licence condition made, granted or imposed under any of them;
    - (C) any judgment; and
    - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, replaced, overruled or applied to new or different facts;
  - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
  - (ix) a monetary amount is in Australian dollars.
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (h) in determining the time of day where relevant to this agreement, the relevant time of day is:
- (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this agreement, the time of day in the place where the party required to perform an obligation is located.
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any clause of it.

## Schedule 2 Parties

Short name	Party	Notice details
<b>Federation</b>	Federation Gold Pty Ltd (to be renamed Federation Mining Pty Ltd) ACN 641 718 989	<p><b>Attention:</b> Mark Le Messurier and Dion Cohen</p> <p><b>Address:</b> 1158 Barrenjoey Road Palm Beach, NSW 2018</p> <p><b>Email:</b> <a href="mailto:mark@federationmining.com.au">mark@federationmining.com.au</a> and <a href="mailto:dion@federationmining.com.au">dion@federationmining.com.au</a></p> <hr/> <p><b>Copy:</b> Neil Pathak</p> <p><b>Address:</b> Gilbert + Tobin Level 22 101 Collins Street Melbourne, VIC 3000</p> <p><b>Email:</b> <a href="mailto:npathak@gtlaw.com.au">npathak@gtlaw.com.au</a></p>
<b>AusSuper</b>	AustralianSuper Pty Ltd ACN 006 457 987 as trustee for AustralianSuper ABN 65 714 394 898 as custodied by J.P. Morgan Nominees Australia Pty Limited as nominee for JPMorgan Chase Bank NA (Sydney Branch)	<p><b>Attention:</b> Luke Smith</p> <p><b>Address:</b> Level 33, 50 Lonsdale Street Melbourne, VIC 3000 Australia</p> <p><b>Email:</b> <a href="mailto:ldsmith@australiansuper.com">ldsmith@australiansuper.com</a></p> <p><b>Copy to:</b> <a href="mailto:investmentslegal@australiansuper.com">investmentslegal@australiansuper.com</a> and <a href="mailto:aus.managedfundsgroup2@jpmorgan.com">aus.managedfundsgroup2@jpmorgan.com</a></p>
<b>Warrantors</b>	Simon Mark Le Messurier	<p><b>Attention:</b> Mark Le Messurier</p> <p><b>Address:</b> 1158 Barrenjoey Road Palm Beach, NSW 2018</p> <p><b>Email:</b> <a href="mailto:mark@federationmining.com.au">mark@federationmining.com.au</a></p>
	International Mining and Finance Corporation 19961145046	<p><b>Attention:</b> James Askew</p> <p><b>Address:</b> 1299 Gilpin Street, Apartment 18, Denver, Colorado 80218 USA</p> <p><b>Email:</b> <a href="mailto:jim@jeaskew.com">jim@jeaskew.com</a></p>
<b>Guarantor</b>	James Askew	<p><b>Attention:</b> James Askew</p> <p><b>Address:</b> 1299 Gilpin Street, Apartment 18, Denver, Colorado 80218 USA</p> <p><b>Email:</b> <a href="mailto:jim@jeaskew.com">jim@jeaskew.com</a></p>

## Schedule 3 Federation Shares

Short name	Shareholder	Ordinary Shares	Performance Shares / Rights	Convertible Notes
<b>AusSuper</b>	AustralianSuper Pty Ltd ACN 006 457 987 as trustee for AustralianSuper ABN 65 714 394 898 as custodied by J.P. Morgan Nominees Australia Pty Limited as nominee for JPMorgan Chase Bank NA (Sydney Branch)	42,274,510	-	58,823,529
<b>FED Founders</b>	<b>James (Jim) Askew</b> (with shares held by International Mining and Finance Corporation 19961145046)	27,555,556	12,444,513	-
	<b>Mark Le Messurier</b>	13,777,778	26,222,153	-
	<b>FED Executives Share Plan Trustee</b>	2,666,666	1,333,334	
<b>Total</b>		<b>86,274,510</b>	<b>40,00,000</b>	<b>58,823,529</b>

## Schedule 4 Warrantor Warranties

The Warrantors represent and warrant that:

- (a) **Due incorporation:** Federation is duly incorporated and validly exists under the law of its place of incorporation. Tasman Mining is duly incorporated and validly exists under the law of its place of incorporation;
- (b) **Capacity and authority:**
  - (i) the execution and delivery of each of this agreement, the Shareholders' Deed and the Convertible Note Deed has been properly authorised by all necessary corporate action of Federation;
  - (ii) Federation has full corporate power and lawful authority to execute and deliver each of this agreement, the Shareholders' Deed and the Convertible Note Deed and to consummate and perform, or cause to be performed, its obligations under each of this agreement, the Shareholders' Deed and the Convertible Note Deed;
  - (iii) Each of this agreement, the Shareholders' Deed and the Convertible Note Deed constitute legal, valid and binding obligations of Federation enforceable in accordance with their respective terms; and
  - (iv) neither the execution and performance by Federation of this agreement (including the issuance of the Federation Shares), the Shareholders' Deed or the Convertible Note Deed nor any transaction contemplated under each document will violate in any respect any material provision of:
    - (A) any applicable law or obligation;
    - (B) Federation's constituent documents; or
    - (C) any other material document, agreement or other arrangement binding upon Federation or its assets;
- (c) **No Insolvency:** no Insolvency Event is subsisting in relation to a Group Company or has occurred in relation to a Group Company;
- (d) **Title and ranking:** on Completion, the Federation Shares and the Convertible Notes will be validly issued by Federation, fully paid and free of any Security Interests, and will rank equally in all respects with existing fully paid ordinary shares in Federation, including the payment of any distributions following issuance;
- (e) **Federation capital structure:** on Completion, the Shares, the Performance Shares or securities convertible into Shares on issue will be as set out in Schedule 3. Except as set out in Schedule 3, no other Shares or securities in Federation (including performance shares, rights, options or convertible notes) have been issued or agreed to be issued (other than performance rights, options or other rights in relation to the Performance Shares that may be issued after Completion);
- (f) **Federation activities:** Federation was incorporated on 15 June 2020 and has not carried on any business other than acquiring Tasman Mining on 15 June 2020, wholly owning Tasman Mining since that date and progressing matters relating to this agreement, the Shareholders' Deed and the Convertible Note Deed and the matters in the Strategic Plan (as defined in the Shareholders' Deed);

- (g) **Tasman Mining activities:** Federation owns all of the shares, capital stock, equity interests, securities, and warrants and options to acquire, or other interests or rights convertible, exchangeable or exercisable into, securities in Tasman Mining. Tasman Mining was incorporated on 28 March 2018 and has not carried on or undertaken any business, transaction or activities other than other than:
- (i) entering into the Project Deed with OceanaGold dated 3 July 2018 in relation to the Blackwater Mining Project (and written variations thereto);
  - (ii) activities relating to advancing the Blackwater Mining Project;
  - (iii) applications for, and holding of, New Zealand exploration permit 60460 and activities related thereto;
  - (iv) activities relating to the proposed acquisition (and financing of the acquisition) of the Kensington mine from Couer Mining;
  - (v) negotiating and entering into the PGF Loan Agreement; and
  - (vi) progressing matters relating to this agreement and the Convertible Note Deed and the matters in the Strategic Plan (as defined in the Shareholders' Deed).

Tasman Mining has no loans outstanding other than the loans to the Warrantors referred to in the Shareholders' Deed, this agreement and the PGF Loan. No person is entitled or has claimed to be entitled to require Tasman Mining to issue any shares or equity interests either now or at any future date;

- (h) **Business affairs:** In the 12 months prior to the Completion Date, the Business and activities of the Group will have been conducted in the ordinary course, without material alteration in its nature, scope or manner; and
- (i) **No asset disposal:** No Group Company will have, except in the ordinary course of the Business, disposed of any asset which is necessary on an ongoing basis to conduct the Business;
- (j) **No Security Interests:** Neither Federation nor Tasman Mining have granted or created or agreed to grant or create any Security Interest in respect of its assets other than pursuant to the PGF Loan Agreement and related security arrangements. The shares in Tasman Mining owned by Federation have been validly issued and are fully paid up and free of any Security Interest;
- (k) **No land:** Neither Federation nor Tasman Mining holds or controls, or has at any time entered into an agreement, arrangement or option under which it can acquire or control, any freehold land, leasehold land or other interest in land located in New Zealand (other than the Wickham property at 9 Wicken Place, Reefton (including the core shed and office and the contents of that property in so far as they relate to OGNZL's operations in the Blackwater Project Area) and the exploration office at 1 Hattie Street, Reefton, which was previously part of the Project Deed but is no longer subject to the Project Deed or part of the Blackwater Mining Project);
- (l) **Information accurate:**
  - (i) all information provided by the Warrantors to AusSuper was provided in good faith and was true and accurate in all material respects at the time provided to AusSuper and not misleading in any material respect at the time provided to AusSuper; and

- For personal use only
- (ii) the Warrantors have not intentionally or recklessly withheld from AusSuper any facts, matters or circumstances relating to Federation which could reasonably be expected to have a material adverse effect on Federation in relation to any matter under this agreement or the Convertible Note Deed;
  - (m) **No litigation:** No Group Company is a party to or the subject of any current litigation, prosecution, arbitration, mediation, or other legal proceedings (including, but not limited to, Tax matters) and, as far as the Warrantors are aware, no such legal proceedings are pending or threatened and no Group Company has received written notice that it is being investigated by or is subject to an audit by a Government Agency (including the Commissioner of Taxation) for any material breach of the law which is outstanding;
  - (n) **Compliance with laws:**
    - (i) Each Group Company is conducting, and has conducted, the Business and all transactions in compliance in all material respects with applicable laws, by-laws and regulations and no Group Company is, or has been, in material breach of any such laws, by-laws or regulations.
    - (ii) There is no investigation, proceeding or enquiry by, or order, decree, decision or judgment of, any court, tribunal, arbitrator, Government Agency or regulatory body outstanding or anticipated against a Group Company (and no notice of such matters have been received).
  - (o) **Contracts:** No Group Company:
    - (i) is a party to or subject to any contract, transaction, arrangement, understanding or obligation which is not in the ordinary and usual course of business or is not wholly on an arm's length basis (other than the loans from the FED Founders referred to in clause 9.3 of the Shareholders' Deed and the Interim Funding); or
    - (ii) is in breach of default under any contract to which it is a party, and no counterparty to any contract to which a Group Company is a party is in breach of such contract.
  - (p) **Indebtedness:** Except as permitted by the terms of this agreement, the Shareholders' Deed or the Convertible Note Deed, no Group Company has any financial indebtedness or has entered into any financial facility (including loans, derivatives and hedging arrangements).
  - (q) **Employees:** Except for Simon Mark Le Messurier, Dion Cohen, Simon Delander and Nigel Slonker, there are no employees employed by the Group (and as at the date of this agreement, no agreements to employ any other person).
  - (r) **Communications:** The information contained in all written communications by or on behalf of a Group Company to any Government Agency in relation to Taxes has been true and accurate in all material respects and has not been misleading in any material way (whether by the inclusion of misleading information or the omission of material information, or both).
  - (s) **Adequate and correct records:** Each Group Company has created and maintained adequate and correct records in all material respects to enable it to comply with its obligations to:

- (i) prepare and submit any information, notices, computations, returns and payments required in respect of any Tax Law;
- (ii) prepare any accounts necessary for the compliance of any Tax Law; and
- (iii) retain necessary records as required by any Tax Law.
- (t) **Tax Returns lodged:** All Tax Returns or any other document required by law (including, but not limited to, all laws imposing or relating to income tax, fringe benefits tax, goods and services tax, payroll tax, group tax, land tax, water and municipal rates and stamp and customs duty) to be lodged or filed by a Group Company, have been, or will be duly lodged or filed.
- (u) **Taxes paid:** All Taxes, levies, assessments, contributions, fees, rates, superannuation and other governmental or municipal charges or impositions (other than those which may be still paid without penalty or interest) for which a Group Company is liable, including any penalty or interest, have been paid or adequately provided for.
- (v) **Correct withholdings:** All amounts required by any Tax Law to be withheld or deducted by or on behalf of a Group Company from any payment made by a Group Company, including, without limitation, salary or wages of employees have been duly withheld or deducted and, where appropriate, duly paid to the relevant Government Agency in accordance with the relevant law.
- (w) **Public officer:** The office of public officer as required under any Tax Law has always been occupied.
- (x) **Stamping:** All documents and transactions entered into by a Group Company which are required to be stamped have been duly stamped.
- (y) **Correct franking:** No Group Company has paid any dividend, prior to Completion, which has not been franked to the required level, or in respect of which the Group Company has not complied with the applicable Tax Law.
- (z) **No deficit:** No Group Company's franking or exempting account is in deficit and will never be treated as being in deficit as at the time of Completion.
- (aa) **No tainting:** The share capital account of each Group Company is not tainted within the meaning of the Tax Act.
- (bb) **No debt forgiveness:** No debt or other objection of each Group Company has been forgiven within the meaning of Division 245 of the Tax Act.
- (cc) **Arm's length transactions:** All transactions and other dealings between each Group Company and another entity have been conducted at arm's length and where they were with an international related party have been documented and priced in accordance with transfer pricing principles.
- (dd) **Division 7A:** No Group Company has made any loan, distributed any property or engaged in any other transaction or arrangement which attracts the operation of Division 7A of Part III of the Tax Act.
- (ee) **Residence:** Each Group Company is a resident (for tax purposes) in the jurisdiction in which it was incorporated.
- (ff) **GST:** In relation to GST:

- (i) each Group Company:
  - (A) is registered for GST under a GST Law where required to be registered for GST;
  - (B) has complied in all respects with the GST Law (as applicable); and
  - (C) is not in default of any obligation to make any payment or return (including any business activity statement) or notification under the GST Law (as applicable);
- (ii) each Group Company has correctly claimed input tax credits on all creditable acquisitions and has held valid tax invoices in each relevant tax period in which the input tax credits were claimed and continues to hold those tax invoices as required by law;
- (iii) there is no contract, arrangement or understanding requiring a Group Company to supply anything which does not contain a provision enabling the Group Company as supplier to require the other party to the contract, arrangement or understanding to pay to the Group Company the amount of any GST for which the Group Company (or the representative member of any GST group of which the Group Company is or has been a member) is liable on a supply under that contract, arrangement or understanding in addition to the consideration for that supply or otherwise seek reimbursement so that the Group Company retains the amount it would have retained but for the imposition of GST;
- (iv) there is no contract, arrangement or understanding requiring a Group Company to pay any amount in respect of GST on a supply which does not contain a provision enabling a Group Company as recipient to require the other party to the contract, arrangement or understanding to provide to a Group Company a tax invoice for any GST on that supply prior to the due date for payment for that supply; and
- (v) there is no payment of any amount in respect of GST made by a Group Company where the Group Company is not contractually obliged to make such payment.
- (gg) **Membership of group:** No Group Company is a member of an income tax consolidated group (within the meaning of section 703 – 5 of the Tax Act), a payroll tax group or a GST group .

IMFC represents and warrants that:

- (hh) **Due incorporation:** it is duly incorporated and validly exists under the law of its place of incorporation;
- (ii) **Capacity and authority:**
  - (i) the execution and delivery of this agreement and the Shareholders' Deed has been properly authorised by all necessary corporate action of it;
  - (ii) it has full corporate power and lawful authority to execute and deliver this agreement and the Shareholders' Deed and to consummate and perform or cause to be performed its obligations under this agreement and the Shareholders' Deed;

- For personal use only
- (iii) this agreement and the Shareholders' Deed constitutes legal, valid and binding obligations of it and each in accordance with its respective terms; and
  - (iv) neither the execution and performance by it of this agreement nor any transaction contemplated under this agreement or the Shareholders' Deed will violate in any respect any material provision of:
    - (A) any applicable law or obligation;
    - (B) its constituent documents; or
    - (C) any other material document, agreement or other arrangement binding upon it or its assets; and
  - (jj) **No Insolvency:** no Insolvency Event is subsisting in relation to it or has occurred in relation to it.

Mr Le Messurier represents and warrants that:

- (kk) **Capacity and authority:**
  - (i) this agreement constitutes his legal, valid and binding obligations of him;
  - (ii) neither the execution and performance by him of this agreement and the Shareholders' Deed nor any transaction contemplated under this agreement or the Shareholders' Deed will violate in any respect any material provision of:
    - (A) any applicable law or obligation;
    - (B) any other material document, agreement or other arrangement binding upon him or his assets.

## Schedule 5 AusSuper Warranties

AusSuper represents and warrants that:

- (a) **Due incorporation:** it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) **Capacity and authority:**
  - (i) the execution and delivery of this agreement, the Shareholders' Deed and the Convertible Note Deed has been properly authorised by all necessary corporate action of AusSuper;
  - (ii) it has full corporate power and lawful authority to execute and deliver this agreement, the Shareholders' Deed and the Convertible Note Deed and to consummate and perform or cause to be performed its obligations under this agreement, the Shareholders' Deed and the Convertible Note Deed;
  - (iii) this agreement, the Shareholders' Deed and the Convertible Note Deed constitute legal, valid and binding obligations of the AusSuper enforceable in accordance with their respective terms; and
  - (iv) neither the execution and performance by AusSuper of this agreement, the Shareholders' Deed or the Convertible Note Deed nor any transaction contemplated under each will violate in any respect any material provision of:
    - (A) any applicable law or obligation;
    - (B) AusSuper's constituent documents; or
    - (C) any other material document, agreement or other arrangement binding upon AusSuper or its assets;
- (c) **Trustee:** AusSuper enters into this agreement, the Shareholders' Deed and the Convertible Note Deed as trustee of a trust, and so warrants in its own capacity and as trustee of the trust that:
  - (i) in respect of each trust no action has been taken or is now proposed to be taken to terminate or dissolve the relevant trust; and
  - (ii) in respect of the trustee:
    - (A) it has full and valid power and authority under the terms of the relevant trust to enter into this agreement, the Shareholders' Deed and the Convertible Note Deed and to carry out the transactions contemplated by this agreement, the Shareholders' Deed and the Convertible Note Deed, including to subscribe for the Federation Shares and purchase the Convertible Notes;
    - (B) it has in full force and effect the authorisations necessary for it to enter into this agreement, the Shareholders' Deed and the Convertible Note Deed and perform its obligations under each and allow them to be enforced (including under the relevant trust agreement and its constitution (if any));

- (C) it enters into this agreement, the Shareholders' Deed and the Convertible Note Deed and the transactions contemplated by this agreement, the Shareholders' Deed and the Convertible Note Deed for the proper administration of the relevant trust and for the benefit of all the beneficiaries of the relevant trust;
  - (D) it is the sole trustee of the relevant trust and no action has been taken or is now proposed to be taken to remove it as trustee of the relevant trust;
  - (E) it has a right, including after any set off, to be fully indemnified out of assets of the relevant trust in respect of obligations incurred by it under this agreement and the Convertible Note Deed;
  - (F) the execution, delivery and performance of this agreement, the Shareholders' Deed and the Convertible Note Deed by AusSuper as trustee of the trust does not and will not result in a breach of the trust deed; and
  - (G) it is not in default under the terms of the relevant trust;
- (d) **No Insolvency:** no Insolvency Event is subsisting in relation to AusSuper or has occurred in relation to AusSuper in the six months preceding Completion;
  - (e) **Authorisations:** it has obtained, or will before Completion obtain, all necessary authorisations and regulatory approvals for the execution, delivery and performance by AusSuper of this agreement, the Shareholders' Deed and the Convertible Note Deed in accordance with their respective terms;
  - (f) **Valid issuance:** AusSuper is a person to whom the Convertible Notes and the Federation Shares can be issued by the Company without a disclosure document being required to be lodged by the Company with ASIC;
  - (g) **No Security Interests:** the Mining Portfolio Shares are not subject to any Security Interest and neither AusSuper nor any of its subsidiaries has granted or created or agreed to grant or create any Security Interest in respect of the Mining Portfolio Shares.

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**Execution page**

**Executed as an agreement:**

Signed by **Federation Gold Pty Ltd** ACN 641 718 989 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

JAMES EDWARD ASKEW

Name of director (print)



Signature of director/secretary

SIMON MARK LE MESSURIER

Name of director/secretary (print)

Signed by **Simon Mark Le Messurier:**

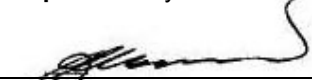


Signature

SIMON MARK LE MESSURIER

Name (print)

Signed by **International Mining and Finance Corporation** by:



Signature of director

JAMES EDWARD ASKEW

Name of director (print)



Signature of director/secretary

JOANNA ASKEW

Name of director/secretary (print)

Signed by **James Edward Askew:**



Signature

JAMES EDWARD ASKEW

Name (print)

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Signed by **AustralianSuper Pty Ltd ACN 006 457 987 as trustee for AustralianSuper ABN 65 714 394 898** (as custodied by J.P. Morgan Nominees Australia Pty Limited as nominee for JPMorgan Chase Bank NA (Sydney Branch) by its undersigned attorneys who have not received any notice of revocation of the power of attorney dated 7 October 2019 as amended from time to time:



Signature of attorney

Shaun Manuell

Name of attorney (print)



Signature of attorney

Marilyn Mather

Name of attorney (print)

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