

CLAYTON UTZ

Steel joint venture agreement

relating to large projects incorporating a steel supplier

[]

First Shareholder

[]

Second Shareholder

[]

Third Shareholder

[]

Project Company

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Joint venture agreement dated

Parties [] ABN [] of [] (First Shareholder)
 [] ABN [] of [] (Second Shareholder)
 [] ABN [] of [] (Third Shareholder)
 [] ABN [] of [] (Project Company)

Background

- A. The parties have agreed to participate in an incorporated joint venture to undertake the Project.
- B. The parties have incorporated and subscribed for shares in the Project Company as the corporate entity to undertake the Project.
- C. The parties wish to regulate the management and business activity of the Project Company upon and subject to the provisions of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Additional Shareholders means entities other than Project Shareholders that the Project Board resolves with Unanimous Consent are appropriate to be offered Subscription Shares under clause 4.4(b).

Associate has the meaning given by Division 2 of Part 1.2 of the Corporations Act 2001.

Associate Entity in relation to any person, means any other person in or in relation to which that person, or a Related Entity of that person:

- (a) is a member, participant or director;
- (b) holds any marketable securities; or
- (c) in practice or effect controls the business activities of that other person,

excluding any holding of marketable securities, not exceeding in total 5% of that class of marketable securities in, or any directorship of, a company which is admitted to the official list of Australian Stock Exchange Limited.

Chair means the independent chairperson of the Project Board appointed in accordance with clause 6.4(a).

Complying Party at any time, means any Project Party not being a Defaulting Shareholder as at that time.

Compulsory Transfer Event in relation to any Project Shareholder, means:

- (a) the receipt by that Project Shareholder, being a Defaulting Shareholder, of a Shareholder Default Notice from the Project Board under clause 21.3; or

- (b) following the occurrence of any Control Change Event in connection with that Project Shareholder, a Project Board resolution with Simple Majority Consent:
 - (i) notes that a Control Change Event has occurred in relation to a Project Shareholder; and
 - (ii) requests a Share Transfer of all the Project Shares of that Project Shareholder under clause 15.

Confidential Information in relation to any person, means information which at any time is in the knowledge, possession or control of that person, or any Subsidiary Entity or employee or agent of that person, relating to the business, operations or affairs of that person, or any Subsidiary Entity of that person, including information relating to:

- (a) corporate or business development and expansion strategy;
- (b) corporate or business structure;
- (c) financial, taxation and accounting matters;
- (d) any relationship or arrangement with any employee or agent;
- (e) inventions, discoveries, trade secrets, knowhow, technology, techniques, processes, information, formulae, ideas or concepts, whether or not reduced to material form, drawings, designs, plans, models, and scientific, technical and product information;
- (f) source and object codes;
- (g) business and marketing plans and projections;
- (h) customer information, customer lists and customer information proprietary to customers;
- (i) agreements and arrangements with third parties, whether or not legally enforceable; and
- (j) computer software.

Continuing Default at any time, means any Shareholder Default by any Defaulting Shareholder that is continuing or subsisting or has not been rectified by that Defaulting Shareholder or waived by each Complying Party or where that Defaulting Shareholder is not in full compliance with any provision of any waiver, as at that time.

Continuing Shareholder in relation to any Share Transfer by any Transferring Shareholder, means any Project Shareholder excluding that Transferring Shareholder.

Control has the same meaning as that term has in accounting standard AASB 127 "Consolidated and Separate Financial Statements".

Control Change Event in relation to any Project Shareholder, means any fact after the date when that Project Shareholder acquired the legal or beneficial interest in any Project Share, comprising:

- (a) the acquisition, without the prior consent of each other Project Shareholder, by any person or persons collectively of:
 - (i) that Project Shareholder, or any Related Entity of which that Project Shareholder is a Subsidiary Entity, as a Subsidiary Entity;

- (ii) any right to hold, exercise or control more than [25]% of the issued share capital or voting power at meetings of directors or shareholders, or any class of directors or shareholders, of that Project Shareholder or Related Entity;
- (iii) any right to hold, exercise or control more than [25]% of the issued share capital or voting power at meetings of directors or shareholders, or any class of directors or shareholders, of that Project Shareholder or Related Entity;
- (iv) any right to hold, exercise or control more than [25]% of the issued units or other beneficial interests, or voting power at meetings of holders of those units or other beneficial interests, or any class of those holders, in any trust or subtrust (**trust interest**) where those holders, whether directly or indirectly and whether separately or collectively, hold any equitable or beneficial interest in any Project Share held by that Project Shareholder;
- (v) any right to hold, exercise or control more than [25]% of the issued share capital or voting power at meetings of directors or shareholders, or any class of directors or shareholders, of any corporate trustee, whether solely or otherwise, of any trust interest, comprising that Project Shareholder or any Related Entity of that Project Shareholder or other company; or
- (vi) any marketable security, or right or option relating to any marketable security, issued or to be issued to any person which, if exercised by that person or persons would create or constitute an acquisition within any previous meaning; or
- (b) the appointment or replacement, or retirement, resignation, removal or cessation, without the prior consent of each other Project Shareholder, of any person as a trustee, whether solely or otherwise, of any trust interest, where that trustee holds, directly or indirectly, any Project Share held by that Project Shareholder upon trust or for the benefit, separately or collectively, for or of any unitholder or beneficiary under that trust interest.

Deed of Assumption means the deed of assumption in the form set out in Schedule 3, or in such other form as the Project Board agrees.

Deed of Cross-Guarantee means the deed of cross-guarantee in the form set out in Schedule 4, or in such other form as the Project Board agrees.

Defaulting Shareholder means any Project Shareholder where a Shareholder Default has occurred in relation to that Project Shareholder.

External Transferee means any person, excluding any Continuing Shareholder, as transferee under any Share Transfer from any Transferring Shareholder.

Financial Year in relation to the Project Company, means each period of 12 months commencing on 1 July in any year and ending on 30 June in the following year or any other period as the Project Board may decide at any time.

Full Transfer Stipulation means any provision in any Transfer Notice that the Transferring Shareholder requires the transfer of all Transfer Shares.

General Accounting Standards means:

- (a) in relation to a body corporate, the accounting standards within the meaning of the Corporations Act 2001 and, where not inconsistent with those accounting standards and the Corporations Act 2001, generally accepted accounting principles and practices in Australia consistently applied by a body corporate or as between bodies corporate; and
- (b) in relation to any other person or entity, accounting standards issued by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia which are applicable to persons or entities other than bodies corporate and, where not inconsistent with those accounting standards, generally accepted accounting principles and practices in Australia consistently applied.

Guarantor has the meaning given to it in the Deed of Cross-Guarantee.

Intellectual Property in relation to any person, means any intellectual, industrial or commercial property of that person, including:

- (a) any Confidential Information;
- (b) any patent, trade mark, service mark or design;
- (c) any copyright;
- (d) any utility model, eligible layout right or plant variety right;
- (e) any business, trade or commercial name or designation, brand name, internet website domain name, logo, symbol, source indication or origin appellation;
- (f) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, whether relating to any manufactured or natural product or otherwise;
- (g) any legal action or proceeding relating to any previous item;
- (h) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any applicable previous item; and
- (i) any document of title, letters patent, deed of grant or other document or agreement relating to any applicable previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description.

Permitted Security means:

- (a) any security interest arising in favour of any governmental agency by operation of legislation, where there is no default in payment of any moneys or performance of any liability due to that governmental agency; or
- (b) any possessory lien arising by operation of law in the ordinary course of business, where there is no default in payment of any moneys or performance of any liability due to the lien creditor.

Project means the project specified in Schedule 1.

Project Board means:

- (a) the board of directors of the Project Company; or
- (b) the directors of the Project Company acting collectively.

Project Budget in relation to any Financial Year, means the annual budget, including capital expenditure, for the Project Company approved by the Project Board for that Financial Year under clause 8.2.

Project Business means any business activity performed by the Project Company.

Project Constitution means the constitution documents of the Project Company adopted by special resolution of the Project Company effective as from the date of incorporation of the Project Company.

Project Cross-Charge means any security interest, including any Deed of Cross-Guarantee, created by any Project Shareholder in favour of any other Project Shareholder to secure the performance of any liability of that Project Shareholder to any other Project Shareholder under this agreement or any agreement relating to the Project.

Project Director means any director of the Project Company.

Project Loan in relation to any Project Shareholder, means any loan, credit or other financial accommodation advanced or extended by that Project Shareholder to the Project Company under any agreement between the Project Shareholders where each Project Shareholder agrees or has agreed to advance or extend any loan, credit or other financial accommodation credit to the Project Company:

- (a) for a term exceeding 12 months; and
- (b) for a principal amount decided in compliance with the Shareholder Percentage of that Project Shareholder applicable to the total principal amount advanced or extended, or to be advanced or extended, to the Project Company by all Project Shareholders under that agreement.

Project Manager means the managing director of the Project Company as appointed in accordance with clause 6.3.

Project Party means each of:

- (a) the Project Company; and
- (b) each Project Shareholder.

Project Period means the period commencing on the date of this agreement and ending on the date of termination of this agreement in relation to all Project Shareholders and the Project Company under clause 22.

Project Plan means the business plan for the Project Company approved and revised at any time under clause 8.1.

Project Share means any ordinary share in the Project Company, issued at any present or future time.

Project Share Price means one Australian dollar per Project Share or Transfer Share (as applicable).

Project Shareholder means:

- (a) each of the First Shareholder, Second Shareholder and Third Shareholder separately; and
- (b) any future holder of Project Shares, who in that capacity agrees to perform this agreement and any liability under this agreement by means of Deed of Assumption.

Related Entity includes a body corporate and a trust and in relation to:

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

Related Transfer Agreement means any:

- (a) Deed of Assumption;
- (b) Sponsor Undertaking;
- (c) Project Cross-Charge;
- (d) Project Loan; and
- (e) Shareholder Loan.

Share Transfer means any actual, proposed or compulsory transfer of any Project Share by any Transferring Shareholder under any Transfer Provision.

Shareholder Default by or in relation to any Project Shareholder, means the occurrence, without the prior consent of each other Project Party, of any breach or default specified in clause 21.1 whether or not within the power or control of that Project Shareholder.

Shareholder Default Notice means written notification by any Complying Party to any Defaulting Shareholder of a Shareholder Default in relation to that Defaulting Shareholder which specifies:

- (a) the nature of the breach of or default under this agreement by that Defaulting Shareholder;
- (b) full particulars of the facts of the breach or default; and
- (c) the particular express or implied provision of this agreement in relation to which the breach or default has occurred.

Shareholder Group in relation to any Project Shareholder, means each Shareholder Group Company, being that Project Shareholder or any Related Entity or Associate Entity of that Project Shareholder, separately and all those Shareholder Group Companies collectively.

Shareholder Group Company in relation to any Project Shareholder, means each of:

- (a) that Project Shareholder;

- (b) each Related Entity of that Project Shareholder; and
- (c) each Associate Entity of that Project Shareholder.

Shareholder Loan in relation to any Project Shareholder, means any loan, credit or other financial accommodation advanced or extended by the Project Company to that Project Shareholder.

Shareholder Percentage means:

- (a) in relation to any Project Shareholder except for a Continuing Shareholder under a Transfer Provision, the proportion which the Project Shares held by that Project Shareholder at any time bears to the total number of Project Shares held by all Project Shareholders at that time; or
- (b) in relation to any Continuing Shareholder under a Transfer Provision, the proportion which the Project Shares held by that Continuing Shareholder at any time bears to the total number of Project Shares held by all Continuing Shareholders at that time.

Simple Majority Consent means any decision made, voted, resolved or passed at any time with the consent of:

- (a) in relation to any decision of the Project Board, Project Directors appointed or engaged by Project Shareholders; or
- (b) in relation to any decision of Project Shareholders, Project Shareholders,

separately or collectively holding the legal interest in more than 50% of issued Project Shares at that time.

Specified Subscription Commitment in relation to any Project Shareholder, means the number of fully paid Project Shares as specified under the name of that Project Shareholder in Schedule 2 or any other number of those Project Shares as agreed between each Project Shareholder and the Project Company at any time before Subscription Completion.

Sponsor Undertaking in relation to any Project Shareholder, means any guarantee, indemnity or other undertaking created by any Related Entity of that Project Shareholder, being a Subsidiary Entity of that Related Entity, or other person, in favour of any other Project Party to secure the performance of any liability of that Project Shareholder to any other Project Party under this agreement or any other agreement relating to the Project.

State means [insert].

Subscription Amount in relation to any Project Shareholder, means the amount in dollars calculated by multiplying the Subscription Commitment of that Project Shareholder by the Project Share Price.

Subscription Commitment in relation to any Project Shareholder, means:

- (a) in relation to an initial subscription, the number of fully paid Project Shares as specified under the name of that Project Shareholder in Schedule 2, or
- (b) in relation to any subsequent subscription, the number of Project Shares that the Project Board agrees to issue with Unanimous Consent.

Subscription Completion at any time, means the completion of the issue of Project Shares by the Project Company to the Project Shareholders or to an Additional Shareholder.

Subscription Date means:

- (a) in relation to an initial subscription, the date specified in Schedule 2 or any other date agreed between each Project Shareholder and the Project Company at any time before Subscription Completion; or
- (b) in relation to any subsequent subscription, the date specified by the Project Company in any subscription notice to any Project Shareholder under clause 4.7 or any other date agreed between each Project Shareholder and the Project Company at any time before Subscription Completion.

Subscription Price means:

- (a) in relation to an initial subscription, the amount specified for each fully paid Project Share to be subscribed under the Specified Subscription Commitment under that caption in Schedule 2; or
- (b) in relation to any subsequent subscription, the amount specified for each fully paid Project Share to be subscribed by the Project Company in any subscription invitation to any Project Shareholder under clause 4.5.

Subscription Shares means:

- (a) separately in relation to any Project Shareholder, the Subscription Commitment of that Project Shareholder; and
- (b) collectively in relation to all Project Shareholders, the aggregate of the Subscription Shares of each Project Shareholder.

Subsidiary Entity in relation to:

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

Transfer Amount means the price payable by any Transferee Shareholder for the Transfer Shares, as calculated by multiplying the Project Share Price by the number of Transfer Shares allocated to that Transferee Shareholder.

Transfer Notice means notice of any proposed Share Transfer by any Transferring Shareholder to the Project Company or any Continuing Shareholder in compliance with any Transfer Provision.

Transfer Offer means any offer by any Continuing Shareholder to purchase Transfer Shares from any Transferring Shareholder under any Transfer Provision.

Transfer Provision means a provision of this agreement relevant to the transfer of shares, including clauses 14, 15, 16 and 17.

Transfer Share means any Project Share comprised in any Share Transfer.

Transferee Shareholder means:

- (a) any Continuing Shareholder; or
- (b) any External Transferee.

Transferring Shareholder means any Project Shareholder who at any time transfers, or proposes or is compelled to transfer, any Project Shares under any Transfer Provision.

Unanimous Consent means any decision made, voted, resolved or passed at any time with the consent of:

- (a) in relation to any decision of the Project Board, all Project Directors; or
- (b) in relation to any decision of Project Shareholders, all Project Shareholders.

1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) **includes** in any form is not a word of limitation;
 - (k) a reference to **\$** or **dollar** is to Australian currency;

- (l) **business day** means any working day on which trading banks generally are open for business in the place of any payment of any moneys or performance of any liability by any party contemplated or required under this agreement, excluding a Saturday, Sunday or public holiday in that place;
- (m) **marketable security** means:
- (i) any share, debenture, stock, option, bond or promissory note created or issued by any company or governmental agency;
 - (ii) any interest in a managed investment scheme as defined in the Corporations Act 2001, including any interest in a unit trust;
 - (iii) any interest or share in a partnership or joint venture; or
 - (iv) any right or option in relation to any marketable security within any previous meaning,
- but excludes any cheque, payment order and bill of exchange, other than a promissory note;
- (n) **security interest** means:
- (i) any mortgage, charge, pledge, lien, trust or power created or conferred in relation to any asset; and
 - (ii) any title retention interest or other proprietary title or legal or equitable interest retained or reserved in any asset under or in connection with any credit or conditional sale agreement, lease, hire purchase agreement, sale and lease-back agreement, bailment or other agreement,
- by way of security for the payment or performance of any liability; and
- (o) **tax** means any tax, duty, charge or rate levied, imposed, assessed or collected under any legislation or by any governmental agency, together with any associated interest, penalty, fine, charge or other amount.

1.3 Performance

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

1.4 Accounting practices

For the purposes of this agreement, unless otherwise specified:

- (a) **(Financial statements)** any decision as to financial matters and any financial statements or accounts made or prepared under this agreement must comply with General Accounting Standards, except for any disclosed departure; and
- (b) **(Accounting terms)** any accounting term used in this agreement must be interpreted in compliance with General Accounting Standards.

2. Shareholder objectives

2.1 Objectives

Each Project Shareholder creates this agreement for the purpose of:

- (a) **(Project expertise)** enabling the use and availability of its business skills, knowhow, experience and expertise to undertake the Project and manage and perform the Project Business;
- (b) **(decision processes)** regulating the decision-making procedures of the Project Company.

2.2 Implementation

Each Project Shareholder must at any time during the continuance of this agreement:

- (a) **(Information)** provide accurate information to each other Project Shareholder and the Project Company in relation to any business activity of the Project Business;
- (b) **(Voting)** perform, or procure the performance of, any action within its power or control necessary or desirable to perform this agreement, including casting any vote as a Project Shareholder and causing any nominee to the Project Board to implement this agreement;
- (c) **(Decisions)** not unreasonably delay any action, consent or decision required by that Project Shareholder under this agreement; and
- (d) **(Project Company)** perform any action within its power and control necessary or desirable to procure the performance of this agreement by the Project Company.

2.3 Constituent documents

- (a) **(Conflict)** The provisions of this agreement govern and prevail over any provision of the constitution documents of the Project Company, in the event of any conflict or inconsistency.
- (b) **(Amendment)** Each Project Shareholder must perform any action necessary to amend any conflicting or inconsistent provision of the Project Constitution upon request by any other Project Shareholder.
- (c) **(Application)** This clause 2.3 applies to the fullest extent permitted by law.

2.4 Contractual relationship

- (a) **(Independent contractor)** Each Project Party acts in the capacity of an independent contractor, as between that Project Party and any other Project Party in the performance of this agreement or any liability under this agreement.
- (b) **(Exclusions)** This agreement does not create, and must not be construed to create, any express or implied relationship between any Project Party and any other Project Party of:
 - (i) employment;
 - (ii) principal and agency; or

- (iii) partnership.

2.5 Services

The Project Shareholders acknowledge that their obligations in relation to the provision of services relating to the Project will be set out in the Project Plan and other accompanying documents and that the Project Company will be invoiced for the services in accordance with clause 9.1.

2.6 Liability cap

Subject to the provisions of the Deed of Cross-Guarantee in Schedule 4, the Project Shareholders acknowledge that the following caps apply in relation to the Deed of Cross-Guarantee:

- (a) in respect of [insert the name of the steel supplier], the total profits earned by [insert the name of the steel supplier] in respect of the Project including that profit shown on invoices issued by the [insert the name of the steel supplier]; and
- (b) in respect of all other Guarantors, the total dollar amount of the contribution of that Guarantor to the Project Company as set out in the Project Plan, plus any liability of the Project Company caused or contributed to by that Guarantor.

3. Project Company

Each Project Party agrees that:

- (a) **(incorporation)** the Project Company has been incorporated before the date of this agreement as a proprietary company limited by shares for the purposes of the Project;
- (b) **(constitution)** the Project Constitution comprises the constitution documents of the Project Company effective as at the date of this agreement;
- (c) **(issued shares)** the Project Company has at the date of this agreement issued the total number of Project Shares as specified in Schedule 2, each at the Project Share Price; and
- (d) **(shareholdings)** each Project Shareholder holds as at the date of this agreement the legal and beneficial interest in the number of issued Project Shares as specified in Schedule 2.

4. Share subscription commitment

4.1 Subscription issues

The Project Company must not issue any marketable securities of the Project Company, except:

- (a) **(Agreed issue)** in compliance with this clause 4 and clause 5; or
- (b) **(Approved issues)** with the Unanimous Consent of Project Board.

4.2 Funding limitation

Project Shareholders are not required to subscribe for Project Shares, or contribute additional funds or advance or extend any loan, credit or other financial accommodation to the Project Company, except as expressly provided under this clause 4 .

4.3 Initial subscription issue

Each Project Shareholder must subscribe for, and the Project Company must issue to each Project Shareholder, the Specified Subscription Commitment of that Project Shareholder in compliance with clause 5.

4.4 Subsequent subscription issue

- (a) **(Future issue)** The Project Company may issue additional Project Shares to Project Shareholders and Potential Shareholders in compliance with this clause 4 and clause 5.
- (b) **(Subscription invitation)** The Project Company may with the Unanimous Consent of Project Shareholders invite Project Shareholders and Additional Shareholders to make offers to subscribe for a specified total of Project Shares at the Project Share Price by means of any written subscription invitation.

4.5 Subscription invitation terms

The Project Company must in the subscription invitation specify that:

- (a) **(Proportional entitlement)** each Project Shareholder is entitled to make a subscription offer for the number of Subscription Shares calculated as nearly as possible in compliance with the Shareholder Percentage of that Project Shareholder;
- (b) **(Project Board-directed entitlement)** each Additional Shareholder is entitled to make a subscription offer for the number of Subscription Shares directed by the Project Board provided that the Additional Shareholder executes a Deed of Assumption and a Deed of Cross-Guarantee;
- (c) **(Lesser bid)** any Project Shareholder is entitled to make a subscription offer for any number of Subscription Shares less than its proportional entitlement as specified in the subscription offer;
- (d) **(Excess bid)** any Project Shareholder is entitled to make a subscription offer for any number of Subscription Shares exceeding its proportional entitlement to the extent that the number of Subscription Shares specified in the subscription offer of any other Project Shareholder is less than its full proportional entitlement (**Excess Shares**) as specified in the subscription offer;
- (e) **(Irrevocability)** any subscription offer made by any Project Shareholder or Additional Shareholder is unconditional and irrevocable;
- (f) **(Closing date)** any subscription offer must be made by any Project Shareholder or Additional Shareholder by written notice to the Project Company on or before the date being 15 business days following the date of sending of the subscription invitation by the Project Company (**Closing Date**); and
- (g) **(Non-compliance)** any Project Shareholder or Additional Shareholder who fails to notify any subscription offer by the Closing Date must be treated by the Project Company as having declined to make any subscription offer.

4.6 Subscription share allocation

- (a) **(Allocation entitlement)** Each Project Shareholder and Additional Shareholder is entitled to and liable for a Subscription Commitment comprised in the subscription offer made by that Subscription Shareholder to the extent of the allocation of those Subscription Shares made by the Project Company to that Project Shareholder in compliance with this clause 4.6.
- (b) **(Specified maximum)** The Project Company must not allocate Subscription Shares to any Project Shareholder in excess of any maximum limit to the number of Subscription Shares, including any excess shares, specified by that Project Shareholder in its subscription offer (**Specified Limit**).
- (c) **(Full allocation to Additional Shareholders)** The Project Company must allocate Subscription Shares to the Additional Shareholders in accordance with a subscription offer that complies with clause 4.5(b).
- (d) **(Proportional allocation)** After complying with clause 4.6(c), the Project Company must allocate Subscription Shares to each Project Shareholder as agreed with the Unanimous Consent of the Project Board having regard to:
 - (i) the Project Shareholders' existing interests in the Project Company at the time the subscription offer is made; and
 - (ii) the effect that the Additional Shareholder or other purpose for the issue will have on each Project Shareholder's obligations under the Project Plan and Project Budget,subject to any Specified Limit for that Project Shareholder.

4.7 Subscription notification

The Project Company must within 2 business days following the Closing Date give a written subscription notice to each Project Shareholder specifying:

- (a) **(Share allocation)** the number of Subscription Shares allocated to that Project Shareholder;
- (b) **(Completion date)** the date and time for Subscription Completion being not earlier than 5 and not later than 10 business days following the sending of the subscription notice by the Project Company; and
- (c) **(Completion details)** the venue for Subscription Completion, being the registered office of, or other venue specified by, the Project Company.

4.8 Subscription liability

Each Project Shareholder who has been allocated Subscription Shares by the Project Company is liable to subscribe for those Subscription Shares in compliance with the subscription notice from the Project Company.

5. Subscription procedure

5.1 Commitment shares

Each Project Shareholder must subscribe for an aggregate number of fully paid Project Shares in the Project Company equal to the Subscription Commitment of that Project Shareholder:

- (a) **(Conditions)** upon and subject to the provisions of this agreement and any additional conditions imposed under clause 5.3; and
- (b) **(Representations)** in reliance upon the representations and warranties made in clause 11.

5.2 Commitment liability

The rights and liabilities of each Project Shareholder under this clause 5 are several and:

- (a) **(Performance)** failure by any Project Shareholder to perform any liability of that Project Shareholder does not release any other Project Shareholder from any liability of that other Project Shareholder; and
- (b) **(Limitation)** no Project Shareholder is liable to perform any liability of any other Project Shareholder.

5.3 Conditions precedent

The liability of each Project Shareholder to subscribe for its Subscription Shares under this agreement is subject to satisfactory completion of each condition precedent that the Project Board resolves with Unanimous Consent to impose.

5.4 Share subscription

Each Project Shareholder must subscribe for its Subscription Shares on the Subscription Date for the consideration of the receipt by the Project Company of its Subscription Amount.

5.5 Share application

This clause 5 operates as an application by any Project Shareholder for the allotment by the Project Company to that Project Shareholder of the Subscription Shares of that Project Shareholder on the Subscription Date as specified in this clause 5, upon and subject to the provisions of the of the Project Constitution, without necessity for any separate instrument of application by that Project Shareholder.

5.6 Share issue

The Project company must issue the Subscription Shares of each Project Shareholder to that Project Shareholder on the Subscription Date.

5.7 Issue terms

The Subscription Shares of any Project Shareholder must upon issue by the Project Company to that Project Shareholder:

- (a) **(Value)** be credited as fully paid; and
- (b) **(Ranking)** rank equally in all respects with all other Project Shares issued by the Project Company, or to be issued by the Project Company under this agreement.

5.8 Share issue completion

- (a) **(Payment)** Each Project Shareholder must on the Subscription Date pay to the Project Company by bank cheque or in other immediately available funds the Subscription Amount of that Project Shareholder.

- (b) **(Share registration)** The Project Company must, promptly following receipt by the Project Company of the Subscription Amount of any Project Shareholder, register the Project Shareholder in its register of members as the holder of its Subscription Shares in compliance with the Corporations Act 2001.
- (c) **(Share certificates)** The Project Company must deliver the share certificates for the Subscription Shares of any Project Shareholder within 10 business days following payment by that Project Shareholder of its Subscription Amount.

5.9 Completion action

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

6. Chair, Project Directors and Project Managers

6.1 Director appointment

Each Project Shareholder may:

- (a) **(Nomination)** nominate one Project Director to be appointed as a director of the Project Company; and
- (b) **(Substitution)** terminate the appointment or engagement of that Project Director and, in the case of termination, retirement or death of that Project Director, appoint or engage a substitute Project Director,

unless otherwise agreed with Unanimous Consent.

6.2 Alternate directors

Each Project Director may appoint an alternate Project Director.

6.3 Project Manager

- (a) **(Nomination)** Project Shareholders may at any time nominate a director, employee or contractor of that Project Shareholder to act as a Project Manager for the Project Company on a secondment basis (**Project Manager Nominee**).
- (b) **(Appointment)** The Project Board may resolve with Unanimous Consent to appoint a Project Manager Nominee as Project Manager of the Project Company on a secondment basis on such terms as the Project Board agrees having regard to the criteria set out in Annexure B.
- (c) **(Substitution)** The Project Board may resolve with Unanimous Consent to terminate the appointment or engagement of that Project Manager and, in the case of termination, retirement or death of that Project Manager, appoint or engage a substitute Project Manager.

- (d) **(Number)** There is no maximum limit on the number of Project Managers that may be appointed or engaged at any time.

6.4 Chair

- (a) **(Election)** The Chair of the Project Board must be elected by the Project Directors having regard to the requirements set out in Annexure A.
- (b) **(Substitution)** The Project Board may resolve with Unanimous Consent to terminate the appointment or engagement of that Chair and, in the case of termination, retirement or death of that Chair, appoint or engage a substitute Chair.

6.5 Board meetings

- (a) **(Meetings)** There must be at least 12 meetings of the Project Board held in any Financial Year.
- (b) **(Additional meetings)** Any additional meeting of the Project Board must be convened within 5 business days or such other time as agreed with Unanimous Consent of a reasonable written request of any Project Shareholder made to the Chair of the Project Board.
- (c) **(Venue)** Meetings of the Project Board held otherwise than by way of circulating resolution must be held at any venue agreed by the Project Directors or, in the absence of agreement, at the registered office of the Project Company.
- (d) **(Methods)** Any meeting of the Project Board may be conducted by telephone conference, video conference or any similar means of audio or audio-visual communication.
- (e) **(Notices)** Each Project Director must receive prior written notice of any meeting of the Project Board, together with an agenda, at least 5 business days before that meeting, except where otherwise agreed by all Project Directors.
- (f) **(Agendas)** The agenda for meetings of the Project Board must be decided by the Chair or, in the case of a meeting convened at the request of any Project Shareholder, by that Project Shareholder.
- (g) **(Resolutions)** The Project Board must not pass any resolution at any meeting where notice of that resolution has not been given in the agenda for that meeting unless that resolution is passed with Unanimous Consent.

6.6 Meeting quorum

- (a) **(Minimum attendance)** A quorum for any meeting of the Project Board is created by the attendance, in person or by alternate (including by way of telephone or other agreed technological means), of a minimum of one Project Director appointed or engaged by each Project Shareholder and the Chair.
- (b) **(Meeting adjournment)** A meeting of the Project Board must be adjourned, if a quorum is not present within 30 minutes of the time specified for the meeting, to a date and time seven days following the time of, and at the same place as, the original meeting to be notified to all Project Directors.
- (c) **(Adjournment quorum)** Any Project Directors present at any meeting adjourned because of insufficiency of quorum create a quorum for that adjourned meeting.

6.7 Voting

- (a) **(Voting power)** Each Project Director is entitled to cast one deliberative vote at any meeting of the Project Board.
- (b) **(Casting Vote)** The Chair of the Project Board will have a casting vote in the event of any deadlock.

6.8 Written resolutions of the Project Board

- (a) The Project Board may pass a resolution without a meeting being held if notice in writing of the resolution is given to each Project Directors and, unless the resolution requires Unanimous Consent of the Project Board, a majority of the Project Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to clause 6.8(a) may consist of several documents in the same form each signed by one or more Project Directors and is effective when signed by:
 - (i) in the case of a resolution requiring Simple Majority Consent, the last of the Project Directors constituting the majority of the Project Directors; and
 - (ii) in the case of a resolution requiring Unanimous Consent, the last of the Project Directors.
- (c) A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 6.8(a) and is taken to be signed when received by the Company in legible form.

6.9 Remuneration

- (a) Unless otherwise agreed by the Project Board with Unanimous Consent, Project Directors are not entitled to payment of any fee, salary or other remuneration, or reimbursement of any cost incurred in the attendance of any Project Board meeting.
- (b) The Chair is entitled to the fee, salary or other remuneration, or reimbursement of costs, as agreed by the Project Board.
- (c) Each Project Manager is provided to the Project Company on a secondment basis and is not entitled to any fee, salary or other remuneration by the Project Company unless the Project Board otherwise directs.

7. Project Company governance

7.1 Functions of the Project Board

The Project Board has full powers of management and control of any business activity of the Project Company, upon and subject to the provisions of this agreement, the Project Constitution or the Corporations Act 2001, including:

- (a) **(Policies)** to establish and amend the policies and methods of operation of the Project;
- (b) **(Bid conditions)** to review and approve bid and commercial conditions;

- (c) **(Work programs, timetables and budgets)** to consider, review, approve, with or without amendments or disapprove the nature and content of work programs, timetables, budgets and long term plans for the Project Company and the Project;
- (d) **(Plans)** to review and approve health and safety, environmental, quality assurance and quality control plans;
- (e) **(Bank guarantees)** to source, negotiate and review funding and bank guarantees;
- (f) **(Reports)** to receive and discuss the reports from Project Managers;
- (g) **(Project Managers)** to appoint, set length of tenure, set remuneration, monitor performance and dismiss Project Managers;
- (h) **(Project Company management)** to appoint, set length of tenure, set remuneration, monitor performance and dismiss management of the Project Company;
- (i) **(Contractual terms)** to consider, review and (to the extent possible) approve, with or without amendments or disapprove any proposed amendments to any contract entered into by the Project Company as a result of submitting a expression of interest, tender or other such document relating to the Project;
- (j) **(Alliances and strategy)** to set and review strategic alliances and negotiation and tendering strategies;
- (k) **(Identify projects)** to determine which additional projects (if any) to pre-qualify and tender for;
- (l) **(Additional Shareholders)** to identify and negotiate with Additional Shareholders in relation to subscribing for shares in the Project Company and to direct the number of Subscription Shares for which an Additional Shareholder may make a subscription offer; and
- (m) **(Other)** to exercise those other functions, and to make decisions, if any, as stated in this agreement to be exercisable by or to be made by it.

7.2 Simple majority decisions

The Simple Majority Consent of the Project Board or Project Shareholders is required for any decision of, as applicable, the Project Board or Project Shareholders relating to the Project or any business activity of the Project Company, except where specified otherwise by this agreement, the Project Constitution or the Corporations Act 2001.

7.3 Unanimous decisions

The Unanimous Consent of Project Shareholders is required for any decision relating to:

- (a) **(Project Budget)** any approval or amendment of any Project Budget;
- (b) **(Project Plan)** any approval or amendment of any Project Plan;
- (c) **(Shareholder agreements)** the creation, amendment or termination of any agreement between the Project Company and any Shareholder Group Company;
- (d) **(Auditors)** the appointment or removal of the auditors of the Project Company;

- (e) **(Board delegation)** the delegation of any power of the Project Board, including any delegation to each Project Manager and the creation by the Project Board of any committee;
- (f) **(Industrial relations)** the Project Company creating any agreement with any industrial union or organisation in relation to any employees or agents;
- (g) **(Constitution amendment)** any amendment to the constitution documents of the Project Company;
- (h) **(Liquidation)** the liquidation or winding up of the Project Company;
- (i) **(Capital reorganisation)** any reorganisation, reclassification, reconstruction, consolidation or subdivision of the capital of the Project Company, including any buyback or redemption of Project Shares, or the creation of any different class of marketable securities in the capital of, the Project Company;
- (j) **(Strategic change)** any change in strategic direction of the Project Company or the commencement of any new business, excluding the Project Business;
- (k) **(Major contracts)** the Project Company creating, amending, or terminating any agreement with a contract term exceeding 12 months or any agreement with a gross contract price value exceeding \$[##], except where previously approved under the Project Plan or the Project Budget;
- (l) **(Capital expenditure)** any annual capital expenditure of the Project Company;
- (m) **(Significant investments)** any agreement by the Project Company to purchase any asset or make any investment with a value in a single case, or any number of cases in any year with an aggregate value, exceeding \$[##];
- (n) **(Significant asset sales)** the sale of part of the undertaking of the Project Company, including any agreement to sell any assets with a value in any single case, or in a number of cases in any year with an aggregate value, exceeding \$[##];
- (o) **(Bonus issue)** the issue of any bonus shares in the capital of the Project Company;
- (p) **(Share offers)** any issue of marketable securities in the capital of the Project Company, except where this agreement expressly permits otherwise;
- (q) **(Financial accommodation)** the Project Company borrowing or raising any loan, credit or other financial accommodation or incurring any guarantee, indemnity or other liability relating to financial indebtedness;
- (r) **(Security interests)** the Project Company creating any security interest over any asset, excluding any Permitted Security;
- (s) **(Subsidiaries)** the incorporation or establishment of the Subsidiary Entity of any Project Group Company;
- (t) **(Asset transfers)** the transfer of any asset to or from any Project Group Company;
or
- (u) **(unanimous issues)** any decision expressly required under this agreement to be made, voted, resolved or passed by the Unanimous Consent of Project Shareholders.

7.4 Functions of the Chair

The Chair will have the following functions, except to the extent otherwise provided in this agreement:

- (a) **(Engagement and consultation)** to actively, constructively and consistently engage with Project Shareholders, financiers, clients and other stakeholders for the furtherance of the Project and other projects;
- (b) **(Tendering advice)** to advise on and engage in expression of interest, tendering, negotiating and construction methodology in relation to the Project;
- (c) **(Networking)** to utilise existing network contacts and other relationships to gain access to opportunities for the Project;
- (d) **(Project Board meetings)** to set Project Board meeting timetables and circulate meeting agendas; and
- (e) **(Other)** such other matters as agreed from time to time.

7.5 Functions of Project Managers

A Project Manager will perform the functions allocated to that Project Manager, except to the extent otherwise provided in this agreement, which may include the following:

- (a) **(Marketing and opportunities)** to identify specific opportunities and provide strategic marketing plans;
- (b) **(Expressions of interest)** to prepare and submit expressions of interest following Project Board approval;
- (c) **(Bid leader and tendering)** to act as bid leader and submit tenders following Project Board approval;
- (d) **(Negotiating)** to carry out pre and post tender negotiations;
- (e) **(Reporting)** to prepare project performance reports for Project Board review in the format requested by, and acceptable to, the Project Board; and
- (f) **(Plan and policy development)** to develop:
 - (i) project risk plans;
 - (ii) common project reporting systems and controls;
 - (iii) common industrial relations strategy;
 - (iv) common health and safety strategy and reporting systems;
 - (v) common environmental plans;
 - (vi) project execution plans; and
 - (vii) prepare project opportunity plans;
- (g) **(Recommending managers)** to identify and recommend people to the Project Board that would be suitable to fill Project Company management roles (eg quality assurance/control manager, health and safety manager, procurement manager etc);

- (h) **(Supervising secondees)** supervising the secondees contemplated by clause 7.6, and
- (i) **(Other)** such other tasks and duties as reasonably directed by the Project Board.

7.6 Secondees

A Project Shareholder may at any time nominate its own employees or contractors to assist that Project Shareholder's Project Manager at the cost and risk of that Project Shareholder.

8. Project planning

8.1 Project plan

- (a) **(Preparation)** The Project Board must prepare and implement a Project Plan for the first Financial Year.
- (b) **(Review)** The Project Board must review the Project Plan on an annual basis when reviewing the Project Budget.

8.2 Project budget

- (a) **(Adoption)** The Project Board must review and adopt a Project Budget for each Financial Year under this clause 8.2.
- (b) **(Draft)** The Project Managers must submit to the Project Board a draft Project Budget at least 3 months before the commencement of each Financial Year.
- (c) **(Approval)** The Project Board must review and seek to approve the Project Budget, with or without amendment, with Unanimous Consent before the commencement of the Financial Year.
- (d) **(Existing budget)** The Project Budget from the previous Financial Year continues to apply until the Project Board adopts a new Project Budget, in the event that the Project Board fails to adopt a Project Budget before the commencement of any Financial Year.

9. Project invoicing and accounts

9.1 Invoicing

Each Project Shareholder must provide the Project Company with an itemised monthly tax invoice setting out, at a minimum, the following:

- (a) **(Supply costs)** the raw cost of that Project Shareholder's supply to the Project Company during that month;
- (b) **(Project Manager costs)** any amount to be paid by the Project Company to the Project Shareholder for the services of a Project Manager during that month;
- (c) **(Mark up on supply and Project Manager costs)** any profit or mark up to be applied to the amounts set out in paragraphs (a) and (b) to be capped at the percentage determined by the Project Board;
- (d) **(Reimbursable expenses)** any costs properly incurred by the Project Shareholder on behalf of the Project Company; and

- (e) **(Other and proposed mark up)** any other amount sought to be paid by the Project Company and any profit or mark up the Project Shareholder has applied to that amount.

9.2 Management reporting

The Project Managers must provide the Project Board with sufficient management and financial information and reports to enable the Project Board to supervise the conduct of the Project Business, including:

- (a) **(Management report)** monthly management and financial reports, comprising:
 - (i) **(Management accounts)** an unaudited profit and loss statement and statement of cash flows and balance sheet for each Project Group Company, on an unconsolidated and, if appropriate, consolidated basis and a summary of the expected costs to complete;
 - (ii) **(Project report)** a report setting out:
 - A. any invoice delivered by the Project Shareholder to the Project Company during that month;
 - B. the costs that the Project Managers expect are required to complete the Project and a percentage estimate of the progress to Project completion;
 - C. details of receipts by Project Company for the subject month and details of any reversals, distributions or amounts in dispute;
 - D. details of any variations requested, approved or rejected during the subject month; and
 - E. details of any disputes or potential disputes, including any variations, contractual claims, disruptions or prolongations;
- (b) **(Annual accounts)** within 3 months following the end of each Financial Year:
 - (i) a profit and loss statement and statement of cash flows for that Financial Year; and
 - (ii) a balance sheet as at the end of that Financial Year,

duly audited by the auditors of the Project Company, for each Project Group Company on an unconsolidated and, if appropriate, consolidated basis; and
- (c) **(Supplementary)** any other report or information that the Project Board may reasonably require.

9.3 Accounting records

The Project Board must procure that the Project Company keeps complete and accurate accounting records of all receipts and outgoings on account of, and assets comprising, the Project Business in compliance with the Corporations Act 2001 and any other applicable law.

9.4 Audit review

The Project Board must procure that any management or annual accounts, accounting records and other information kept or provided under this clause 9 will be reviewed every 6 months and audited annually by the auditors of the Project Company.

9.5 Shareholders access

Each Project Shareholder is entitled at its cost to full access during normal business hours to, and to inspect, all accounting records of the Project Company.

9.6 Shareholder information

- (a) Each Project Shareholder is entitled to obtain any information, or a copy of any document, in relation to the Project Business received by any Project Director appointed or engaged by that Project Shareholder.
- (b) Each Project Shareholder must provide reasonable assistance to each Project Manager in relation to that Project Manager's obligations under this clause.

10. Distribution policy

10.1 Distribution policy

Unless otherwise determined by the Project Board with Unanimous Consent, the Project Board must distribute to Project Shareholders such income as is derived from the business activity of the Project Company and legally available for distribution or payment to Project Shareholders (**Distributable Income**) subject to:

- (a) (**Budget**) any retentions required by the Project Budget;
- (b) (**Prudential criteria**) prudent financial management including having regard to any amounts owing by a Project Shareholder to the Project Company;
- (c) (**Business planning**) the Project Plan;
- (d) (**Tax provisions**) proper provisioning for any tax liability of the Project Group;
- (e) (**Capital requirements**) proper provisions for working capital and operational requirements of the Project Group;
- (f) (**Credit terms**) the provisions of any agreement with any bank or financial institution under which the Project Group has borrowed or raised any loan, credit or other financial accommodation; and
- (g) (**Other**) other matters as may be unanimously agreed from time to time.

10.2 Payment of distributions

Subject to clause 10.1, Distributable Income must be distributed by the relevant Project Manager promptly after receipt by the Project Company.

10.3 Failure to generate Distributable Income

Unless otherwise provided for in a Budget or Project Plan, nothing in this agreement entitles a Project Shareholder to receive income from a Project Manager or Project Company if that Project Shareholder fails to generate Distributable Income.

11. Representations

11.1 Representations

Each corporate Project Party represents and warrants to each other Project Party that at any time during the continuance of this agreement:

- (a) **(Corporate status)** that Project Party is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration;
- (b) **(Corporate powers)** that Project Party has the corporate power to own its assets and perform any business activity as contemplated at any time by this agreement;
- (c) **(Solvency)** none of the following events has occurred in relation to the party:
 - (i) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or anyone else is appointed who (whether or not as agent for the party) is in possession, or has control, of any of the party's assets for the purposes of enforcing an encumbrance;
 - (ii) an event occurs which gives any person the right to seek an appointment referred to in paragraph (i);
 - (iii) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of the party or an event occurs that would give any person the right to make an application of this type;
 - (iv) the party proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
 - (v) the party is declared or taken under any applicable law to be insolvent or the party's board of directors resolves that the party is, or is likely to become at some future time, insolvent;
 - (vi) any person in whose favour the party has granted any encumbrance becomes entitled to enforce that encumbrance or any floating charge under that encumbrance crystallises; or
 - (vii) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (i) to (vi);
- (d) **(Legal compliance)** the execution or performance of this agreement by that Project Party does not contravene any provision of:
 - (i) the constitution of that Project Party;
 - (ii) any agreement or document created or executed by that Project Party;
 - (iii) any law; or
 - (iv) any regulatory consent or licence from any governmental or public agency relating to that Project Party or its assets; and

- (e) **(Corporate compliance)** that Project Party has full power, and has procured all corporate consents necessary or desirable for the execution, performance, validity or enforceability of this agreement, including any resolution or minutes or extracts from minutes of any meeting or written resolution of directors or members or power of attorney, which has been executed in compliance with its constitution and any applicable law.

11.2 Disclaimers

Each Project Shareholder agrees with each other Project Shareholder that:

- (a) **(Inquiries)** that Project Shareholder has relied upon its own inquiries in relation to any fact relating to this agreement and not upon any representation or warranty made by or on behalf of any other Project Shareholder, except where expressly specified in this agreement;
- (b) **(Implied terms)** any representation or warranty or other provision which might otherwise be implied by law into this agreement is excluded to the fullest extent permitted by law; and
- (c) **(Release)** that Project Shareholder releases each other Project Shareholder from any liability or legal action or proceeding which that Project Shareholder might otherwise have against that other Project Shareholder resulting from any representation or warranty or other provision which is not expressly specified in this agreement.

12. Project undertakings

12.1 Positive undertakings

Each Project Shareholder must, and must procure that the Project Company will, at any time during the continuance of this agreement:

- (a) **(Contractual performance)** perform any obligation of that Project Shareholder in compliance with this agreement or any tender submitted by the Project Company with due and proper skill, competence, care and diligence;
- (b) **(Legal compliance)** comply with any law, including any environmental, discrimination or occupational health and safety law, consent, licence or requisition of any governmental or public agency or public utility and applicable industry code of conduct relating to the Project or this agreement;
- (c) **(Budget)** make such contributions to the Project Company as required under the Budget in respect of that Project Shareholder;
- (d) **(Consents)** procure and perform any provision, and any action necessary to protect the validity, of any regulatory or contractual consent or licence from any governmental or public agency, public utility or other person reasonably necessary to promote the establishment and continuity of the Project or this agreement, and provide promptly upon request by any Project Party a certified copy or other evidence of the currency of that consent or licence;
- (e) **(Deed of Cross-Guarantee)** execute a Deed of Cross-Guarantee;
- (f) **(Dealings in good faith)** conduct all dealings with each other and the Project Company in good faith;

- (g) **(Work collaboratively)** work with each other, suppliers, customers, clients of the Project Company and other organisations which deal with the Project Company in a manner that promotes the objectives set out in clause 2.1;
- (h) **(Declare conflicts)** declare any conflicts in relation to the Project otherwise than as part of the Project Company;
- (i) **(Participate fully)** undertake the Project Business and any related activities the Project Board unanimously decides to pursue to the best of their ability;
- (j) **(Agents)** employ or engage employees, contractors or agents in connection with the Project that:
 - (i) are reasonably skilled, competent, careful, diligent and experienced in performing the role they have been employed or engaged to perform in relation to the Project or other projects to be undertaken in accordance with this agreement; and
 - (ii) possess the necessary and reasonably appropriate qualifications and approvals to undertake such work;
- (k) **(Agent performance)** procure that any employee or agent connected with the Project exercises proper professional skill, care and due diligence; and
- (l) **(Default rectification)** permit any other Project Party to perform any action necessary or desirable to rectify any breach of or default under this agreement by that Project Shareholder to the satisfaction of that other Project Party, without liability or prejudice to any other right of that other Project Party and at the full cost of the Project Shareholder.

12.2 Negative undertakings

Each Project Shareholder must not, and must procure that its Shareholder Group will not, at any time during or after the continuance of this agreement, directly or indirectly, without the prior consent of each other applicable Project Shareholder:

- (a) **(Business restriction)** having regard to the scale of the Project, perform any business activity in any business capacity which would be:
 - (i) in direct competition with the Project; or
 - (ii) to the actual or potential detriment of the Project,
 except for the purpose of performance of any other provision of this agreement;
- (b) **(Name restriction)** use in connection with any other business activity in any business capacity any name or logo of the Project Group;
- (c) **(Confidential information)** subject to clause 19, at any time during or after the Project Period:
 - (i) disclose any Confidential Information owned by or relating to any other Project Shareholder or its Shareholder Group, except as authorised by that Project Shareholder or required in the proper performance of the Project or this agreement; or
 - (ii) use or attempt to use that Confidential Information in any manner to the actual or potential detriment of any other Shareholder Group;

- (d) **(Act unconscionably)** seek to gain an unconscionable advantage over other Project Shareholders in relation to the Project or any other proposal or contract arising out of the Project;
- (e) **(Competition)** dispose of shares in the Project Company and subsequently submit a tender in respect of the Project; or
- (f) **(Intellectual property)** use any Intellectual Property owned by any other Shareholder Group, including any use for the purpose of any communication to any client, customer, supplier or agent of that other Shareholder Group;
- (g) **(Agency holding out)** represent or hold out to any person in any manner that any employee or agent of that Shareholder Group is an employee or agent or partner of any other Shareholder Group;
- (h) **(Employee recruitment)** entice away from any other Shareholder Group, any employee or agent of that other Shareholder Group at any time during this agreement and the period of 6 months following termination of this agreement;
- (i) **(Business capacity)** perform any action restricted under this clause 12.2 in any manner or by any means:
 - (i) in any business capacity, including action as a principal, in partnership, joint venture or association with any other person, trustee, beneficiary, secured party or director or other employee or agent;
 - (ii) personally or by or through any other person;
 - (iii) on account of any Related Entity, Associate Entity or agent of that Shareholder Group or any other person; or
 - (iv) verbally, directly or by telephone, electronically or in writing by any letter, circular, advertisement or document; or
- (j) **(Procurement)** procure or direct any person to perform, or attempt to perform, any action restricted under this clause 12.2 without prior written consent of the Project Company.

13. Share transfer

13.1 Transfer restriction

Any Project Shareholder must not at any time during the continuance of this agreement, directly or indirectly, transfer the legal or equitable or beneficial interest of that Project Shareholder in any Project Shares, despite any other provision of this agreement, except in compliance with this clause 13.

13.2 Permitted transfer

Any Project Shareholder may at any time transfer the legal and equitable or beneficial interest of that Project Shareholder in any Project Share:

- (a) **(Specified procedure)** where permitted or compelled under any Transfer Provision;
- (b) **(Project Board consent)** with the prior consent of the Project Board;

- (c) **(Subsidiary entity)** to any wholly-owned Subsidiary Entity of that Project Shareholder or company where any individual Project Shareholder holds the legal and beneficial interest in all the shares of that company; or
- (d) **(Capital distribution)** to the shareholders of the Project Shareholder under any capital distribution in which those shareholders participate proportionally to their existing shareholdings in that Project Shareholder.

13.3 Security interest restriction

Any Project Shareholder must not at any time during the continuance of this agreement, directly or indirectly, create any security interest affecting or relating to any Project Share held by that Project Shareholder, without the prior consent of each other Project Shareholder, except for any Permitted Security.

13.4 Future shareholder undertaking

The Project Board must not at any time register any person not being a party to this agreement as a Project Shareholder, whether following any transfer of any Project Shares or otherwise, except where the Project Company has previously received a Deed of Assumption executed by that person.

13.5 Indemnity

Each Project Shareholder must indemnify any other Project Shareholder against any loss, cost or expense incurred by that other Project Shareholder resulting from any breach of or default under this clause 13 by that Project Shareholder.

14. Voluntary transfer

14.1 Application

This clause 14 applies to any Transferring Shareholder wishing to effect a Share Transfer.

14.2 Transfer notice

- (a) **(Notification)** The Transferring Shareholder must give a Transfer Notice to the Project Company specifying that the Transferring Shareholder wishes to transfer the Transfer Shares.
- (b) **(Irrevocability)** Any Transfer Notice given to the Project Company is irrevocable.

14.3 Notice contents

Any Transfer Notice must specify the proposed details of the Share Transfer comprising:

- (a) **(Number)** the number of Transfer Shares;
- (b) **(Class)** the class of the Transfer Shares, if issued Project Shares at that time comprise more than one class;
- (c) **(Price)** the Project Share Price;
- (d) **(Purchaser)** the name and address of any transferee of the Transfer Shares;
- (e) **(Terms)** any other terms or provisions; and

- (f) **(Total holding)** the fact whether the Transferring Shareholder requires transfer of all the specified Transfer Shares under a Full Transfer Stipulation.

14.4 Sale agency

The Project Company upon receipt of a Transfer Notice becomes the agent of the Transferring Shareholder for the transfer of the Transfer Shares to any Continuing Shareholder in compliance with this clause 14.

14.5 Continuing shareholder notification

The Project Company must within 5 business days of receipt of the Transfer Notice notify each Continuing Shareholder of that Transfer Notice and its provisions and the total number of Transfer Shares.

14.6 Transfer procedure

Clause 16 applies in relation to any transfer under this clause 14.

14.7 Unrestricted transfer

- (a) **(Unallocated shares)** The Transferring Shareholder may without any restriction agree to transfer any Transfer Shares within 3 months following the closing date or, as applicable, extended closing date specified in clause 16 comprising:
- (i) all the Transfer Shares, in the event that insufficient Transfer Offers are received to comply with the Full Transfer Stipulation; or
 - (ii) all or any Transfer Shares, in the event that insufficient Transfer Offers are received to enable allocation of those Transfer Shares to any Continuing Shareholder, in compliance with this clause 14.
- (b) **(External transferee)** The Transferring Shareholder may transfer any Transfer Shares under this clause 14 to any External Transferee specified in the Transfer Notice, or with the prior consent of the Project Company, any other person as an External Transferee.
- (c) **(Transfer terms)** The Transferring Shareholder must not transfer any Transfer Shares under this clause 14 if that transfer would be effected upon any other provision more favourable to the External Transferee than the equivalent provision specified in the Transfer Notice.
- (d) **(Transfer agreement)** The Transferring Shareholder must deliver to the Project Company a certified true copy of the transfer agreement relating to any Share Transfer under this clause 14 at least 5 business days before any completion of that transfer.

15. Compulsory transfer

15.1 Compulsory transfer event

This clause 15 applies to any Share Transfer following the occurrence of a Compulsory Transfer Event.

15.2 Notification

The Project Company must notify each Project Shareholder of any Compulsory Transfer Event immediately following receipt of actual notice of that Compulsory Transfer Event and, in the event of failure by the Project Company, any Project Shareholder may give that notice.

15.3 Sale agency

The Project Company following a Compulsory Transfer Event becomes the agent of the Project Shareholder to which that Compulsory Transfer Event relates for the transfer of the Transfer Shares comprising all the Project Shares held by that Project Shareholder as the Transferring Shareholder to any Continuing Shareholder in compliance with this clause 15.

15.4 Continuing shareholder notification

The Project Company must within 5 business days of receipt of actual notice of the Compulsory Transfer Event by the Project Company notify each Continuing Shareholder of the total number of Transfer Shares.

15.5 Transfer procedure

Clause 16 applies in relation to any transfer under this clause 15.

15.6 Directed transfer

- (a) **(Unallocated shares)** The Project Company may by written notice require that the Transferring Shareholder, within 6 months following the closing date or as applicable extended closing date specified in clause 16, transfer all or any Transfer Shares, in the event that insufficient Transfer Offers are received to enable allocation of those Transfer Shares to any Continuing Shareholder, in compliance with this clause 15.
- (b) **(External transferee)** The Transferring Shareholder must transfer any Transfer Shares under this clause 15 to any External Transferee specified by the Project Board.
- (c) **(Transfer terms)** The Project Company must not compel the Transferring Shareholder to transfer any Transfer Shares under this clause 15 if that transfer would be effected upon any other provision more favourable to the External Transferee than to Continuing Shareholders.

16. Pre-emption procedure

16.1 Invitation terms

The Project Company must give notice of the following to each Project Shareholder other than the Transferring Shareholder:

- (a) **(Price)** the Project Share Price;
- (b) **(Rights)** the Transfer Shares must be transferred together with all attached rights and free and clear of any security interest;

- (c) **(Total transfer)** the invitation:
 - (i) is subject to a Full Transfer Stipulation; or
 - (ii) has no applicable Full Transfer Stipulation;
- (d) **(Proportional entitlement)** each Continuing Shareholder is entitled to make a Transfer Offer for the number of Transfer Shares calculated as nearly as possible in compliance with the Shareholder Percentage of that Continuing Shareholder;
- (e) **(Lesser bid)** any Continuing Shareholder is entitled to make a Transfer Offer for any number of Transfer Shares less than its proportional entitlement as specified in the Transfer Offer;
- (f) **(Excess bid)** any Continuing Shareholder is entitled to make a Transfer Offer for any number of Transfer Shares exceeding its proportional entitlement to the extent that the number of Transfer Shares specified in the Transfer Offer of any other Continuing Shareholder is less than its full proportional entitlement (**excess shares**) as specified in the Transfer Offer;
- (g) **(Maximum limit)** any Continuing Shareholder is entitled to specify the maximum limit to the number of Transfer Shares, including any excess shares, for which any Transfer Offer by that Continuing Shareholder is made;
- (h) **(Irrevocability)** any Transfer Offer made by any Continuing Shareholder is unconditional and irrevocable;
- (i) **(Closing date)** any Transfer Offer must be made by any Continuing Shareholder by written notice to the Project Company on or before the date being 15 business days following the date of the Project Company sending the notice under clause 16.1 (**closing date**); and
- (j) **(non-compliance)** any Continuing Shareholder who fails to notify any Transfer Offer by the closing date must be treated by the Project Company as having declined to make any Transfer Offer.

16.2 Transfer offers

- (a) **(Full transfer deficiency)** A Transferring Shareholder is entitled to transfer the Transfer Shares to any person, despite anything contained in this clause 16, in the event of non-compliance with any Full Transfer Stipulation because the aggregate number of Transfer Shares comprised in Transfer Offers from Continuing Shareholders is less than the total number of Transfer Shares.
- (b) **(Share allocation)** Transfer Shares must be allocated by the Project Company under clause 16.3, in the absence of, or in the event of compliance with, any Full Transfer Stipulation.

16.3 Transfer share allocation

- (a) **(Allocation entitlement)** Each Continuing Shareholder is entitled and liable to receive a Share Transfer from the Transferring Shareholder of the Transfer Shares comprised in the Transfer Offer made by that Continuing Shareholder to the extent of the allocation of those Transfer Shares made by the Project Company to that Continuing Shareholder in compliance with this clause 16.

- (b) **(Specified maximum)** The Project Company must not allocate Transfer Shares to any Continuing Shareholder in excess of any specified limit of that Continuing Shareholder.
- (c) **(Proportional allocation)** The Project Company must allocate Transfer Shares to each Continuing Shareholder as agreed with the Unanimous Consent of the Project Board having regard to:
 - (i) the Continuing Shareholders' interests in the Project Company at the time the Transfer Offer is made; and
 - (ii) the effect that the transfer will have on each Continuing Shareholder's obligations under the Project Plan and Project Budget,
 subject to any specified limit for that Continuing Shareholder.
- (d) **(Excess allocation)** The Project Company must allocate any excess shares remaining after the initial allocation to each Continuing Shareholder whose initial allocation is less than its specified limit in compliance with the Shareholder Percentage of that Continuing Shareholder, subject to that specified limit.
- (e) **(Repeated excess allocation)** The Project Company must repeat the application of clause 16.3(d), as though any previous allocation were the initial allocation, as many times as necessary to allocate the total number of Transfer Shares.

16.4 Unallocated share offers

- (a) **(Application)** This clause 16.4 applies in the event that any Transfer Shares comprising excess shares remain unallocated following allocation by the Project Company under clause 16.3 (**unallocated shares**).
- (b) **(Notification)** The Project Company must within 2 business days following the closing date:
 - (i) notify each Continuing Shareholder of the fact and number of the unallocated shares; and
 - (ii) invite each Continuing Shareholder to apply for unallocated shares and in compliance with this clause 16.4.
- (c) **(Invitation)** The Project Company must specify that:
 - (i) any Transfer Offer must be made by any Continuing Shareholder by written notice to the Project Company on or before the date being 5 business days following the date of the Project Company sending the invitation under clause 16.1 or 16.4(b)(ii) (**extended closing date**); and
 - (ii) the same provisions apply to the Transfer Offer as specified in clause 16.1, except where modified by this clause 16.4.
- (d) **(Allocation)** The Project Company must apply clause 16.3 in relation to any Transfer Offer received under this clause 16.4, except that the Shareholder Percentage of any Continuing Shareholder must include Transfer Shares previously allocated under that clause 16.3.

16.5 Transfer notification

The Project Company must within 2 business days following the closing date or, as applicable, the extended closing date give written notice to the Transferring Shareholder and each Continuing Shareholder specifying whether or not any Share Transfer has resulted from a notice under clause or 16.4(b)(ii) and, in the event of any Share Transfer, specifying:

- (a) **(Shareholder transferee)** the name of each Continuing Shareholder who has been allocated Transfer Shares;
- (b) **(Share allocation)** the number of Transfer Shares allocated to that Continuing Shareholder;
- (c) **(Completion date)** the date and time for completion of the Share Transfer between the Transferring Shareholder and each Continuing Shareholder, following consultation with the relevant parties, being not earlier than 5 and not later than 10 business days following the sending of the notice by the Project Company under this clause 16.5; and
- (d) **(Completion details)** the venue for completion, being the registered office of, or other convenient venue specified by, the Project Company.

16.6 Transfer liability

Each of the Transferring Shareholder and each Continuing Shareholder who has been allocated Transfer Shares by the Project Company is liable to complete a Share Transfer in compliance with the completion notice from the Project Company.

16.7 Transfer completion

- (a) **(Payment)** Each Continuing Shareholder liable under this clause 16 must on the completion date pay by bank cheque or in other immediately available funds the Transfer Amount.
- (b) **(Transfer)** The Transferring Shareholder must in exchange for payment under clause 16.7(a) deliver to the Project Company on behalf of any Continuing Shareholder in relation to any Transfer Shares allocated to that Continuing Shareholder:
 - (i) a transfer of those Transfer Shares duly executed by or on behalf of the Transferring Shareholder; and
 - (ii) the share certificates applicable to those Transfer Shares.
- (c) **(Registration)** The Project Company must, promptly following receipt of any properly stamped transfer and share certificates from the Transferring Shareholder under this clause 16.7 register the applicable Continuing Shareholder in its register of members as the holder of the Transfer Shares comprised in the Share Transfer to that Continuing Shareholder.
- (d) **(Certificates)** The Project Company must deliver the share certificates for any Transfer Shares to any Continuing Shareholder within 10 business days following registration of that Shareholder as the holder of those Transfer Shares.

17. Related transfer agreements

17.1 Related agreement liability

Each of the Transferring Shareholder and each Continuing Shareholder must create or perform, or procure the creation or performance of, any Related Transfer Agreement, or any action in connection with any Related Transfer Agreement, in compliance with this clause 17 simultaneously with, or before, completion of any Share Transfer under any Transfer Provision by that Transferring Shareholder to any Transferee Shareholder, except where each of those parties agrees otherwise.

17.2 Shareholder loans

- (a) **(Full repayment)** Any Transferring Shareholder must pay to the Project Company all moneys due under any Shareholder Loan, in the event of a Share Transfer of all the Project Shares held by that Transferring Shareholder.
- (b) **(Part repayment)** Any Transferring Shareholder must pay to the Project Company the percentage of all moneys due under any Shareholder Loan equal to the proportion converted to a percentage which the Transfer Shares bear to the total number of Project Shares held by that Transferring Shareholder immediately before the Share Transfer, in the event of a Share Transfer of less than all the Project Shares held by that Transferring Shareholder.
- (c) **(Loan moneys)** This clause 17 applies in relation to all moneys due under any Shareholder Loan, whether on account of principal, accrued interest, costs or otherwise.
- (d) **(Payment acceleration)** All moneys due under any Shareholder Loan and payable under this clause 17.2 immediately become due and payable on the due date for completion of any Share Transfer, or earlier date of actual payment, despite any provision of any agreement relating to that Shareholder Loan.
- (e) **(Transfer completion)** Any Transferring Shareholder is not entitled to complete any Share Transfer to any External Transferee, except following payment of all moneys due and payable in relation to any Shareholder Loan in compliance with this clause 17.2.

17.3 Project loans

- (a) **(Loan transfer)** Any Transferring Shareholder must:
 - (i) transfer or procure the transfer of any existing Project Loan advanced to the Project Company; and
 - (ii) procure the novation of any loan, credit or other agreement to advance or extend any Project Loan to the Project Company at any future time, to the Transferee Shareholder from that Transferring Shareholder;
 - (iii) in full, in the event of a Share Transfer of all Project Shares held by that Transferring Shareholder; or
 - (iv) to the extent of the percentage of that Project Loan equal to the proportion converted to a percentage which the Transfer Shares bear to the total number of Project Shares held by that Transferring Shareholder

immediately before the Share Transfer, in the event of a Share Transfer of less than all Project Shares held by that Transferring Shareholder.

- (b) **(Loan acceptance)** Each Continuing Shareholder must accept any liability under any Project Loan to be transferred or novated to that Continuing Shareholder under this clause 17.3.
- (c) **(Loan proceeds)** Any Transferring Shareholder is not liable to complete any Share Transfer to any Transferee Shareholder under any provision of this agreement, except where:
 - (i) in relation to any existing Project Loan, that Transferee Shareholder simultaneously pays to the Transferring Shareholder an amount equal to all moneys due under that Project Loan, or portion of that Project Loan, to be transferred to that Shareholder Transferee; and
 - (ii) in relation to any future Project Loan, that Transferee Shareholder fully accepts the novation of that Project Loan, or portion of that Project Loan, to be novated to that Transferee Shareholder.

17.4 Project performance security

Any Transferring Shareholder must in relation to any Share Transfer to any External Transferee procure the delivery by or on behalf of that External Transferee of:

- (a) **(Deed of Assumption)** a Deed of Assumption duly executed by or on behalf of the External Transferee to or in favour of each other Project Party;
- (b) **(Sponsor undertaking)** a Sponsor Undertaking containing equivalent provisions to any existing Sponsor Undertaking relating to that Transferring Shareholder to or in favour of each other Project Party duly executed by or on behalf of:
 - (i) the ultimate holding company as defined in the Corporations Act 2001 of any External Transferee, which is a Subsidiary Entity;
 - (ii) the controlling shareholder or shareholders collectively of any corporate External Transferee, which is not a Subsidiary Entity; or
 - (iii) any other person approved by each Continuing Shareholder and the Project Company, in relation to any External Transferee who is an individual or a corporate trustee of any trust or subtrust; and
- (c) **(Project cross-security)** a Deed of Cross-Guarantee containing equivalent provisions to any existing Deed of Cross-Guarantee created by that Transferring Shareholder duly executed by or on behalf of that External Transferee to and in favour of each Continuing Shareholder.

17.5 Sponsor undertaking release

Each Continuing Shareholder and the Project Company must, in the event of a Share Transfer to any Transferee Shareholder of all the Project Shares held by any Transferring Shareholder, release any person creating any Sponsor Undertaking relating to that Transferring Shareholder from that Sponsor Undertaking.

17.6 Deed of Assumption

Each Continuing Shareholder and the Project Company must execute a Deed of Assumption in the form set out in Schedule 3 where that Deed of Assumption has been executed and delivered by or on behalf of any External Transferee in compliance with this clause 17.

17.7 Transfer completion action

- (a) **(Timing)** Any action, including satisfaction of any condition precedent, performed by any party under this clause 17 for the purpose of completion of any Share Transfer by any Transferring Shareholder to any Transferee Shareholder is deemed to be simultaneous with performance of any action required to be performed by any other party for that purpose.
- (b) **(Mutuality)** Any action required to be performed by any party under this clause 17 for the purpose of completion of any Share Transfer by any Transferring Shareholder to any Transferee Shareholder is deemed not to be performed until performance of all action required to be performed by each other party for that purpose.

18. Transfer default

18.1 Attorney appointment

Each Project Shareholder under this agreement irrevocably appoints the Project Company, and any authorised officer of the Project Company, severally the attorney (**attorney**) of that Project Shareholder to perform any action, at the full cost of that Project Shareholder, and whether in the name of that Project Shareholder or the attorney, which that Project Shareholder is liable to perform under any Transfer Provision, but where that Project Shareholder has defaulted in performing that action.

18.2 Specific action

The attorney may in the event of any default by any Transferring Shareholder under any Transfer Provision, without limitation of anything previously specified in this clause 18:

- (a) **(Payment)** receive the proceeds of the Transfer Amount from any Transferee Shareholder on behalf of the Transferring Shareholder, without liability to derive or pay interest on those proceeds;
- (b) **(Receipt)** give a valid and effectual receipt to that Transferee Shareholder for those proceeds on behalf of the Transferring Shareholder, without any liability of that Transferee Shareholder for the proper application or accounting for those proceeds; and
- (c) **(Transfer)** execute any transfer of the Transfer Shares on behalf of the Transferring Shareholder to and in favour of that Transferee Shareholder.

18.3 Transfer registration

The Project Company must promptly following receipt of the proceeds of the Transfer Amount from any Transferee Shareholder under this clause 18 register that Transferee Shareholder in its register of members as the holder of the Transfer Shares comprised in that Share Transfer to that Transferee Shareholder.

18.4 Transfer proceeds

- (a) **(Certificate delivery)** The Transferring Shareholder in default under any Transfer Provision must deliver any share certificates for its Transfer Shares to the Project Company.
- (b) **(Shareholder loan payment)** The Project Company must deduct from the proceeds of the Transfer Amount any amount due and payable by the Transferring Shareholder to the Project Company under clause 17.2.
- (c) **(Proceeds payment)** The Project Company must pay to the Transferring Shareholder by bank cheque or in other immediately available funds the balance of any proceeds of the Transfer Amount actually received by the Project Company, after any deduction under this clause 18.4, in exchange for delivery of the share certificates under this clause 18.4.

19. Confidentiality

19.1 Confidentiality liability

Any Project Party who receives Confidential Information of or relating to the Project Company or the Shareholder Group of any other Project Party during the Project Period, and after termination or expiration of this agreement, for any reason must keep that Confidential Information confidential and must:

- (a) **(Disclosure restriction)** not publish or disclose the Confidential Information to any person except with the prior consent of the disclosing Project Party or as permitted under any provision of this agreement;
- (b) **(Performance use)** not use the Confidential Information for any purpose, except where strictly necessary for the performance of its liability under this agreement; and
- (c) **(Legal compliance)** comply with all applicable privacy and consumer laws.

19.2 Agency disclosure

The recipient Project Party may disclose the Confidential Information specified in clause 19.1 to any employee or agent of that Project Party or any other Project Party to the extent reasonably necessary or desirable for the purposes of this agreement during the Project Period.

19.3 Agency compliance

The recipient Project Party must procure that any employee or agent of the recipient Project Party or any other Project Party is informed of, and complies with, the confidentiality liability of the recipient Project Party under this agreement.

19.4 Permitted exemptions

This clause 19 does not apply to any Confidential Information which:

- (a) **(Public information)** at the date of this agreement is in or at any subsequent time comes into the public domain, except through breach of or default under this agreement by the recipient Project Party or any employee or agent of the recipient Project Party or any other Project Party;
- (b) **(Prior knowledge)** can be shown by the recipient Project Party to the satisfaction of the disclosing Project Party to have been known by the recipient Project Party before disclosure by the disclosing party to the recipient Project Party;
- (c) **(Third party access)** subsequently comes lawfully into the possession of the recipient Project Party from a third party; or
- (d) **(Legal process)** is required by compulsion of law to be disclosed to a third party.

19.5 Remedies

Any recipient Project Party agrees that monetary damages alone would not be a sufficient remedy for a breach of or default under this clause 19 and, in addition to any other legal remedy, the disclosing Project Party is entitled to any interim, interlocutory or permanent injunction to prevent breach of or default under and compel specific performance of this clause 19.

20. Publicity

20.1 Promotional restriction

Each Project Shareholder must not issue any promotional material or make any public comment on or in connection with the Project or this agreement, without the prior consent of the Project Company, except where required by law.

20.2 Name restriction

Each Project Shareholder must not use or permit the use of the name of the Project Group, whether in whole or in an abbreviated form, or any trade mark or logo owned by the Project Group or associated with the Project, except for the proper purposes of the Project Business or with the prior consent of the Project Company and in compliance with written conditions attached to that consent.

20.3 Restriction scope

This clause 20 applies, without limitation, to any promotion, presentation, publicity and advertising in any medium for any purpose and survives termination of this agreement.

20.4 Promotional approval

Each Project Shareholder must submit to the Project Company any advertising, written sales promotion, press release and other publicity matter relating to the Project, the Project Group or this agreement in which the name or mark of the Project or the Project Group may be inferred or implied and must not publish or use any previously specified item without the prior consent of the Project Company.

21. Shareholder default

21.1 Default events

Specified default events by or in relation to any Project Shareholder for the purposes of this agreement comprise:

- (a) **(Performance default)** in the absolute discretion of the Project Board, any breach of or default under this agreement, the Project or the Project Plan resulting from failure by that Project Shareholder to perform any provision of, or liability under, this agreement, the Project or the Project Plan, except for a rectifiable breach or default, which is rectified within 30 days following written notice from any other Project Party requiring rectification;
- (b) **(Misrepresentation)** material non-compliance by that Project Shareholder with or the fact of material inaccuracy of any representation, warranty or undertaking made or deemed to be made or repeated by that Project Shareholder in this agreement, or in any document delivered to any other Project Party under or in connection with this agreement;
- (c) **(Attachment)** the fact of any attachment, execution, writ of execution, distress, distraint, garnishee order, charging order or similar legal process enforced or levied against any asset of that Project Shareholder;
- (d) **(Security enforcement)** the enforceability of any security interest over any asset of that Project Shareholder securing payment for any amount after the occurrence of any default or default event under that security interest;
- (e) **(Receivership)** the appointment of any receiver or receiver and manager over, or possession taken by any secured party of, any asset of that Project Shareholder;
- (f) **(Insolvency)** cessation of payment generally by that Project Shareholder or the inability of that Project Shareholder, or each other Project Party reasonably deciding that that Project Shareholder is unable, to pay all its debts as and when they become due and payable;
- (g) **(Administration)** the appointment of any administrator of that Project Shareholder;
- (h) **(Liquidation)** any legal action, not being in the reasonable decision of each other Project Party a disputed action, being commenced, judicial order made or resolution passed for the winding up or liquidation of that Project Shareholder;
- (i) **(Debt arrangement)** the creation by that Project Shareholder of any debt arrangement with its creditors generally or any class of creditors, including any compromise, composition, moratorium, scheme of arrangement or reconstruction or property transfer for the benefit of creditors; or
- (j) **(Business cessation)** the cessation or proposal for cessation of business generally by that Project Shareholder.

21.2 Default notification

Any Defaulting Shareholder must notify each other Project Party of any Shareholder Default by or in relation to that Defaulting Shareholder promptly following receipt of actual notice by that Defaulting Shareholder of that Shareholder Default.

21.3 Shareholder default notice

The Project Board may at any time during any Continuing Default give a Shareholder Default Notice to any Defaulting Shareholder.

21.4 Shareholder default enforcement

Any Defaulting Shareholder is following receipt of a Shareholder Default Notice liable to:

- (a) **(Rights suspension)** suspension of all rights attaching to its Project Shares; and
- (b) **(Compulsory transfer)** the application of clause 15 in relation to its Project Shares.

21.5 Shareholder remedies

Any Complying Party, following any Shareholder Default Notice under clause 21.3, retains any right under this agreement against any Defaulting Shareholder in relation to any breach or default by that Defaulting Shareholder, in addition to any other right provided by law, except to the extent that the liability of that Defaulting Shareholder is excluded or limited under any provision of this agreement.

22. Termination

22.1 Termination events

This agreement terminates immediately upon the occurrence of:

- (a) **(Agreement)** any agreement by all Project Shareholders and the Project Company to that effect;
- (b) **(Share transfer)** in relation to any Project Shareholder, the transfer by that Project Shareholder of all its Project Shares in compliance with this agreement; and
- (c) **(Liquidation)** the winding up or dissolution of the Project Company.

22.2 Termination effect

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

- (a) **(Continuing liability)** affect any provision of this agreement expressed to operate or have effect after termination; or
- (b) **(Accrued rights)** have any prejudicial effect on any accrued right of any party in relation to any breach or default under this agreement by any other party occurring before termination.

22.3 Continuing remedies

Each Project Party, following termination of this agreement under this clause 22, retains any right against any other Project Party under this agreement in relation to any breach or default by that other Project Party, in addition to any other right provided by law, except to the extent that the liability of that other Project Party is excluded or limited under any provision of this agreement.

23. Dispute resolution

23.1 Disputes

This clause 23 applies to any dispute or difference (**dispute**) arising between the parties in relation to:

- (a) (**Interpretation**) this agreement or its interpretation;
- (b) (**Rights**) any right or liability of any party under this agreement; or
- (c) (**Action**) the performance of any action by any party under or arising out of this agreement, whether before or after its termination.

23.2 Dispute negotiation

- (a) (**Arbitration restriction**) A party must not refer a dispute to arbitration under this agreement, unless that party has complied with this clause 23.2.
- (b) (**Dispute notification**) A party claiming that a dispute has arisen must notify the other party specifying details of the dispute.
- (c) (**Negotiation**) Each party must refer a dispute to an authorised officer for consideration and use its best efforts to resolve the dispute through negotiation within 7 days following the dispute notification or longer period agreed between the parties.
- (d) (**CEO Resolution**) Each party must refer the dispute to its chief executive officer, in the event that the authorised officers of the parties fail to resolve the dispute within the specified period. Each party must following reference to its chief executive officer use its best efforts to resolve the dispute by agreement.
- (e) (**Process termination**) A party in compliance with this clause 23.2 may terminate the dispute resolution process by notice to the other party at any time after 7 days following reference of the dispute to its chief executive officer.
- (f) (**Restriction release**) A party is not required to comply with this clause 23.2 in relation to any dispute where the other party is in breach of or default under this clause 23.2 in relation to that dispute.

23.3 Arbitration

- (a) (**Submission**) Each party must submit any dispute which remains unresolved following the negotiation process specified in clause 23.2 to arbitration under the Rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators and Mediators Australia applicable at the time of submission.
- (b) (**Arbitrator**) The Chair must appoint a sole Grade 1 arbitrator (under the rules of the Institute of Arbitrators and Mediators Australia).
- (c) (**Legal representation**) Each party is entitled to legal representation at any arbitration.

23.4 Litigation

If a Party is aggrieved by the decision of the arbitrator following arbitration conducted in accordance with this clause 23, the Dispute may be finally settled by recourse to litigation.

23.5 Urgent relief

A party may at any time apply to a court of competent jurisdiction for any equitable or other remedy for reasons of urgency, despite anything contained in this clause 23.

23.6 Continued performance

Any party must continue to perform any liability of that party in compliance with this agreement relating to any issue in dispute, despite and during any dispute negotiation or arbitration being conducted under this clause 23.

24. General

24.1 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

First Shareholder

Name: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

Second Shareholder

Name: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

Third Shareholder

Name: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

Project Company

Name: [insert]
Address: [insert]
Fax: [insert]
For the attention of: [insert]

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 24.1(b); and

- (e) are taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the 3rd business day after the date of posting to an address within Australia, and on the 5th business day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety, unless that local time is not on a business day, or is after 5.00 pm on a business day, when that communication is taken to be received at 9.00 am on the next business day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 24.1(b), unless that delivery is made on a day that is not a business day, or after 5.00 pm on a business day, when that communication is taken to be received at 9.00 am on the next business day.

24.2 Governing law

This agreement is governed by and must be construed according to the law applying in the State.

24.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 24.3(a).

24.4 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

24.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

24.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

24.7 Consents

Consent required under this agreement from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

24.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior consent of each other party, except in the case of any transfer by any Project Shareholder of its Project Shares in compliance with this agreement.

24.9 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

24.10 No representation or reliance

- (a) Each party acknowledges that no party (nor any person on a party's behalf) has made any representation or other inducement to it to enter into this agreement except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this agreement.

24.11 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

24.12 Stamp duties

Each Project Shareholder:

- (a) must procure payment of all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement, and each transaction effected by or made under this agreement;
- (b) indemnifies each other party against any liability arising from failure to comply with clause 24.12(a); and
- (c) is authorised to apply for and retain for the benefit of the parties the proceeds of any refund due in respect of stamp duty paid under this clause 24.12.

24.13 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

24.14 Indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this agreement.

24.15 GST

- (a) **(Taxable supply)** This clause 24.15 applies to any GST taxable supply by any party (**supplier**) under or in connection with this agreement to or for the benefit of any other party (**recipient**) in relation to any consideration, remuneration, cost or other payment payable to the supplier or reimbursable or indemnified by the recipient under this agreement (**consideration**) in connection with that supply.
- (b) **(Exclusive pricing)** Any consideration has been or will be specified, calculated or assessed under or by reference to any provision of this agreement initially without reference to, and exclusive of, any GST payable by the supplier on or in relation to that consideration (**tax exclusive payment**).
- (c) **(Payment escalation)** The recipient must increase the tax exclusive payment by any additional amount, sufficient that the total amount payable by the recipient, after discounting for the amount of any GST liability of the supplier on that total, is equal to the tax exclusive payment.
- (d) **(Input tax credits)** The supplier must at any time deduct from any cost or expense which:
 - (i) has been incurred by the supplier in connection with this agreement or any taxable supply;
 - (ii) is reimbursable, wholly or partly, by the recipient to the supplier under this agreement; and
 - (iii) includes any GST payable by any supplier of any supply to the supplier comprised in the cost or expense amount payable by the recipient,

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

- (e) **(Tax invoices)** The supplier must issue to the recipient tax invoices in proper form and in compliance with any GST law connected with any supply of any right, property or services by the supplier under this agreement.

Schedule 1 - Project details

1. Project

The Project Company intends to collate and submit an expression of interest and/or tender having regard to the following key Project metrics:

1. Project Shareholders scope of supply and pricing

Unless otherwise agreed, the Project Shareholders will provide the following scope of supply and pricing on any Project on behalf of the Project Company:

	Summary of intended scope of supply	Pricing guidance
First Shareholder	[Insert summary of specialty, role and intended scope of supply]	[Insert target raw costs, excluding contingencies, profits, Project Company costs, etc, including by reference to scope of supply where possible]
Second Shareholder	[Insert summary of specialty, role and intended scope of supply]	[Insert target raw costs, excluding contingencies, profits, Project Company costs, etc, including by reference to scope of supply where possible]
Third Shareholder	[Insert summary of specialty, role and intended scope of supply]	[Insert target raw costs, excluding contingencies, profits, Project Company costs, etc, including by reference to scope of supply where possible]

2. Target Project value

As a result of the individual contributions of the Project Shareholders, the Project Company expects to be able to target projects valued at approximately \$[insert] to \$[insert].

[Include a summary of any key supply attributes or gaps that may impact on Project selection having regard to the Project Shareholders' above scope of supply].

3. Target Project Company costs

Costs and overheads associated with management and administration of the Project Company are expected to in the range of \$[insert] to \$[insert].

4. Target contingency to be retained

The Project Board should consider projects that would require a contingency retention in the range of [insert]% to [insert]%.

5. Target Project profit margin

The project should be selected to enable the Project Company to achieve a minimum profit margin of approximately [insert]%.

Schedule 2 - Subscription commitment

1. First Shareholder

1.1 Issued Shares Number

[##]

1.2 Specified Subscription Commitment Share Number

[##]

2. Second Shareholder

2.1 Issued Shares Number

[##]

2.2 Specified Subscription Commitment Share Number

[##]

3. Third Shareholder

3.1 Issued Shares Number

[##]

3.2 Specified Subscription Commitment Share Number

[##]

4. Total Issued Shares

[##]

5. Specified Subscription Price

[##]

6. Specified Subscription Date

[##]

Schedule 3 - Deed of Assumption

Deed of Assumption dated

Parties

(Additional Shareholder)

(Project Company)

Current Project Company Shareholders means the parties specified in Schedule 1 (each a **Continuing Shareholder**)

Background

- A. The Project Company is a corporate entity incorporated to effectuate the joint venture project specified in Schedule 1.
- B. Each of the Project Company and the Current Project Company Shareholders is a party to a shareholder agreement regulating the management and business activity of the Project Company as specified in Schedule 1
- C. The Current Project Company Shareholders have unanimously resolved to invite the Additional Shareholder to apply for or be assigned [##] shares in the Project Company, subject to the Additional Shareholder executing this deed.
- D. The Purchaser agrees to be bound by the terms and conditions of the Joint Venture Agreement.

Operative provisions

1. Interpretation

1.1 Definitions

In this deed:

Continuing Shareholder means each Continuing Shareholder separately and all those Continuing Shareholders collectively.

Joint Venture Agreement means the joint venture agreement dated [insert date] between the Project Shareholders.

1.2 Joint Venture Agreement definitions

Meanings apply to words and expressions used but not separately defined in this deed as defined or specified in the Joint Venture Agreement.

1.3 Interpretation

This deed, and words and expressions used in this deed, must be interpreted in the same manner as specified in the Joint Venture Agreement.

2. Assumption of responsibilities

The Additional Shareholder agrees to be bound, as a shareholder in the Project Company, by the terms and conditions of the Joint Venture Agreement from the date that the Additional Shareholder is registered as the holder of [##] shares in Project Company.

3. General

3.1 Notices generally

Any notice or other communication which must be given, served or made under or in connection with this deed must be given in accordance with clause 24.1 of the Joint Venture Agreement.

3.2 Notices to Additional Shareholder

The address of the Additional Shareholder shall, until substituted by any party giving written notice to each other party of the substituted address, be as follows:

Additional Shareholder

Name: []

Address: []

Fax: []

For the attention of: []

3.3 General

The provisions of clause 24 of the Joint Venture Agreement apply to this deed as though set out fully herein.

3.4 Stamp duty

The Additional Shareholder will pay all stamp duty, including fines and penalties, which may be payable in connection with the execution, delivery, performance or enforcement of this deed.

Deed of Assumption Schedule 1 - Project details

1. **Project**
2. **Joint Venture Agreement**
3. **Continuing Shareholders**

Executed as a deed.

[Insert execution clauses]

Schedule 4 - Deed of Cross-Guarantee

Deed of Cross-Guarantee dated

Parties **Project Company**

Guarantors means the parties specified in Schedule 1

Background

- A. The Project Company and the Guarantors are parties to the Joint Venture Agreement relating to the Project.
- B. Each Guarantor has agreed on the following terms and conditions to guarantee to the Project Company all of the Obligations (as defined in this deed) and to indemnify the Project Company against any loss arising from any failure by that Guarantor to perform the Obligations.
- C. This deed takes effect as a Cross Guarantee and will be construed as a separate Guarantee in relation to each Guarantor as if that person were the only Guarantor hereunder.

Operative provisions

1. Interpretation

1.1 Definitions

In this deed:

Event of Default means any event which constitutes a breach of, or is declared to be an event of default (however described) by, any Transaction Document.

Guaranteed Obligations, in relation to a Guarantor, means the obligation to pay money to the Project Company in relation to any or all Losses of the Project Company which have been caused or contributed to by that Guarantor by reason of:

- (a) the Transaction Documents or any other agreement, deed, instrument or document relating to the Project between the Guarantors and the Project Company and/or other parties; or
- (b) any other transaction, matter or event relevant to the Project,

and includes any liabilities or obligations which:

- (c) are liquidated or unliquidated;
- (d) are present, prospective or contingent;
- (e) are in existence before or come into existence on or after the date of this deed;
- (f) relate to the payment of money or the performance or omission of any act;
- (g) sound in damages only; or

(h) accrue as a result of any Event of Default,

and irrespective of:

- (i) whether the Guarantor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (j) the circumstances in which the Project Company comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this deed, including any assignment of any liability or obligation or of this deed; or
- (k) the capacity in which the Debtor and the Project Company come to owe or be owed such liability or obligation.

Joint Venture Agreement means the joint venture agreement dated [insert date] between the Project Shareholders.

Losses means any allegation, debt, cause of action, 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, and all demands, damages, losses, costs, expenses or liabilities.

Potential Event of Default means any event which, with the giving of notice, lapse of time or satisfaction of a condition or determination, could constitute an Event of Default.

Relevant Cap means:

- (a) in respect of [insert the name of the steel supplier], the total profits earned by [insert the name of the steel supplier] in respect of the Project including that profit shown on invoices issued by the [insert the name of the steel supplier]; and
- (b) in respect of all other Guarantors, means the total dollar amount of the contribution of that Guarantor to the Project Company as set out in the Project Plan, plus any liability of the Project Company caused or contributed to by that Guarantor.

Security means an encumbrance, guarantee (including this deed), indemnity, letter of credit, letter of comfort, performance bond or other assurance against loss which secures the Guaranteed Obligations, and whether existing at the date of this deed or at any time in the future.

Taxes means all present and future taxes, levies, imposts, deductions, charges, fees and withholdings, in each case plus interest, related penalties, and any charges, fees or other amounts in respect of any of them.

Transaction Document means the Joint Venture Agreement and any Deed of Assumption, Sponsor Undertaking, Project Cross-Charge, Project Loan or Shareholder Loan

1.2 Joint Venture Agreement definitions

Meanings apply to words and expressions used but not separately defined in this deed as defined or specified in the Joint Venture Agreement.

1.3 Interpretation

This deed, and words and expressions used in this deed, must be interpreted in the same manner as specified in the Joint Venture Agreement.

1.4 Several

This deed shall be construed as a separate Guarantee in relation to each person included in the definition of Guarantor as if that person were the only person included in the definition of the Guarantor.

2. Cross-guarantee

2.1 Cross-guarantee

- (a) Subject to clause 2.1(b), each Guarantor covenants for the benefit of and guarantees to the Project Company payment in full on demand of all Guaranteed Obligations up to that Guarantor's Relevant Cap.
- (b) In circumstances of fraud, gross negligence or wilful default by a Guarantor, the Guarantor responsible for the fraud, gross negligence or wilful default covenants with and guarantees to the Project Company payment in full on demand of all Guaranteed Obligations caused or contributed to by such fraud, gross negligence or wilful default.

2.2 Payment by Guarantor

If a Guarantor does not pay the Guaranteed Obligations when due, that Guarantor must on demand pay to the Project Company the Guaranteed Obligations which is then due and unpaid or which later becomes due, owing or payable.

2.3 Void or voidable transactions

If:

- (a)
 - (i) the Project Company has at any time released or discharged:
 - A. a Guarantor from its obligations under any Transaction Document; or
 - B. any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Project Company; or
 - (ii) any payment or other transaction to or in favour of the Project Company has the effect of releasing or discharging:
 - A. a Guarantor from its obligations under any Transaction Document; or
 - B. any assets of the Guarantor from a Security; and
 - (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason; and
 - (c) that claim is upheld or is conceded or compromised by the Project Company,
- then

- (d) **(Restitution of rights)**: the Project Company will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (e) **(Restore Project Company's position)**: the Guarantor must immediately do all things and execute all documents as the Project Company may reasonably require to restore to the Project Company all those rights; and
- (f) **(Indemnity)**: the Guarantor must indemnify the Project Company against costs, losses and expenses suffered or incurred by the Project Company in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

2.4 Representations and warranties repeated

Each representation and warranty in clause 11 of the Joint Venture Agreement will be repeated on each day whilst any of the Guaranteed Obligations remain outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

2.5 Preservation of liability

Each Guarantor acknowledges that the liability of each Guarantor shall not be affected by any one or more of the following (whether or not done or occurring by or with the consent of the creditor or with the knowledge or consent of a Guarantor):

- (a) any collateral rights or obligations which may exist between any Guarantors;
- (b) any variation or avoidance of any such collateral rights or obligations;
- (c) any other person becoming a guarantor of a Guarantor's obligations and liabilities;
- (d) any other person intended to be bound as a surety in respect of a Guarantor's obligations and liabilities not being or becoming so bound;
- (e) any other Guarantor being released from or ceasing to be bound by this clause;
- (f) the giving of any release or waiver by any creditor to any Guarantor;
- (g) the making of any arrangement or compromise by any creditor with any of the Guarantor;
- (h) liquidation of a Guarantor or of any surety of a Guarantor;
- (i) the giving of any security by a Guarantor; or
- (j) where a Guarantor is a member of any partnership, any change in the membership of such partnership.

2.6 Release from guarantee

- (a) A Guarantor may only be released from its obligations under this deed if:
 - (i) the Project Company itself has been released from all liability in relation to the Project; and
 - (ii) the Project Company executes a Deed of Release to that effect.

- (b) A Deed of Release may be executed even if:
 - (i) a provision of this deed has become enforceable in respect of a Guarantor; or
 - (ii) the winding up of a Guarantor has commenced.

3. Payment

3.1 On demand

All money payable by a Guarantor under this deed must be paid by the Guarantor on demand by the Project Company in immediately available funds to the account and in the manner notified by the Project Company to the Guarantor.

3.2 Payment in gross

All money received or recovered by the Project Company on account of the Guaranteed Obligations will be treated as payments in gross without any right on the part of a Guarantor to claim the benefit of any money received or recovered by the Project Company or any Security, until the Project Company has been paid all of the Guaranteed Obligations.

3.3 Interest

As a liability separate and distinct from each Guarantor's liability under clause 2, each Guarantor must on demand by the Project Company pay interest on all amounts due and payable by it and unpaid under or in respect of this deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the rate specified by the Project Company for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 3.3.

3.4 No set-off or deduction

Subject to any Transaction Document, all payments by a Guarantor to the Project Company under this deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Project Company), then the Guarantor must:

- (c) pay to the Project Company any additional amounts necessary to enable the Project Company to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Project Company if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Project Company for any Taxes and interest or penalties to which the Project Company may become liable consequent on the failure of the Guarantor to pay those taxes; and

- (l) delivery to the Project Company, promptly on request from the Project Company, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

4. Miscellaneous

4.1 Governing law

This deed is governed by and will be construed according to the laws of [insert].

4.2 Application of Credit Legislation

Notwithstanding any provisions to the contrary, nothing in this deed shall be construed as securing or purporting to secure in favour of the Project Company the payment of any moneys or the performance of any obligation by the Guarantors which would render this deed a guarantee which would then be regulated by any credit legislation.

4.3 Counterparts

- (a) This deed need not be executed by the Project Company.
- (b) Each Guarantor may execute this deed on one or more separate counterparts, each of which constitutes the deed of that Guarantor.

Deed of Cross-Guarantee Schedule 1 - Guarantors

[Insert First Shareholder name] [ABN/ACN ###]

[Insert Second Shareholder name] [ABN/ACN ###]

[Insert Third Shareholder name] [ABN/ACN ###]

Executed as a deed.

[Insert execution clauses]

Annexure A

Selection Criteria for the Chair

- Retired or semi-retired professional.
- Be independent of the Project Shareholders.
- Be qualified as a professional engineer.
- Possess considerable project experience working as a client's representative at project director or senior management level.
- Responsible for a number of overall multi-discipline projects with delivery in excess of \$1 billion each.
- Possess a thorough knowledge of project management and associated reporting and monitoring systems.
- Have an extensive knowledge of local and international supply chains.
- Be well respected by clients and ECPM contractors in the oil and gas, mining or infrastructure sectors.
- Have an ability to secure early engagement on projects.
- Possess a thorough knowledge of modern fabrication, construction and modularisation techniques.
- Be a strong leader and possess the ability to bring together a number of entities under a joint venture to act as a single contractor.
- Have knowledge of, and a track record of working with, Government agencies.
- Possess a thorough knowledge corporate governance.
- Have a focus on improving local content and supporting the local supply chain.

Annexure B

Selection Criteria for Project Managers

- Be qualified as a professional engineer.
- Strong workplace, health and safety experience and track record.
- Strong project financial reporting skills.
- Ability to maintain strong customer relationships.
- Possess a thorough knowledge of project management and associated reporting and monitoring systems.
- Have an extensive knowledge of local and international supply chains.
- Be well respected by clients and ECPM contractors in the oil and gas, mining or infrastructure sectors.
- Possess project experience working as a client's representative at project director or senior management level.
- Responsible for a number of overall multi-discipline projects with delivery in excess of \$500 million each.
- Strong communication skills and ability to motivate project teams.
- Strong negotiation skills.
- Strong management skills.
- Have knowledge of, and a track record of working with, Government Agencies.
- Able to prioritise tasks and staff.
- Possess a thorough knowledge corporate governance.
- Preferably possess a strong understanding of fabrication and construction techniques.
- Have a focus on improving local content and supporting the local supply chain.