

**2<sup>nd</sup> August, 2013**

**AUSTRALIAN SECURITIES EXCHANGE LIMITED – ASX  
RELEASE BY OCHRE GROUP HOLDINGS LIMITED**

## **Ochre Group Holdings enters into implementation deed with Emerald Oil & Gas NL to create a combined diversified natural resources development and holding company**

The Board of Ochre Group Holdings Limited (ASX: **OGH**) is pleased to announce that it has entered into an implementation deed with Emerald Oil & Gas NL (ASX: **EMR**) to give effect to a scheme of arrangement to combine the two companies.

### **HIGHLIGHTS OF THE PROPOSED SCHEME**

- **OGH to acquire all the issued ordinary shares of EMR by way of scheme of arrangement.**
- **Following completion, EMR will be a wholly-owned subsidiary of OGH and will cease to be a listed entity.**
- **Under the proposed scheme, EMR shareholders are offered to receive 1 OGH share for every 2.75 EMR shares held as consideration for their EMR shares.**
- **Ochre to complete a placement of up to \$1,000,000 at a price of A\$0.04, representing a 150% premium to the closing price of OGH shares on 31/07/2013.**
- **Combined entity to focus on building significant cash flow through its core natural resources asset holdings and financing business capabilities**
- **The proposed scheme will be subject to a number of conditions precedent, including EMR shareholder approval.**

### **Proposed merger details**

Under the proposed scheme of arrangement, OGH will acquire all the issued ordinary shares of EMR for the scheme consideration.

The scheme consideration offered to EMR shareholders is one fully paid ordinary share in OGH in exchange for every 2.75 ordinary fully paid shares held in EMR.

The proposed scheme does not include any terms for the acquisition of the existing unlisted options in EMR.

The proposed scheme will be subject to an Independent Expert's Report and, depending upon the results of that report, EMR has agreed to put the proposed scheme of arrangement forward for approval of shareholders pursuant to the requirements of Section 411 of the Corporations Act.

No OGH shareholder approval is required as the proposed scheme is structured as an EMR scheme of arrangement.

At completion of the proposed scheme, EMR will cease to be a listed entity and become a wholly-owned subsidiary of OGH, where nominees of OGH will be appointed to the Board of EMR.

The terms of the proposed merger include OGH completing a placement of OGH shares of \$500,000 to \$1,000,000 at a price of A\$0.04, representing a premium in excess of 150% compared to the closing price of OGH shares on 31 July 2013.

In addition, OGH has agreed to restructure its board and company secretarial remuneration arrangements such that the non executive directors' fees (chairman and two non executive directors) will be reduced to \$120,000 per year in total and the company secretarial services will incur a fee of \$80,000 per year.

Attached as Appendix 1 of this announcement, is a copy of the Implementation Deed.

### **Board and management of the combined entity**

OGH intends that with effect from completion of the scheme, the Board of the combined entity will comprise of the existing board of OGH and the addition of Mr Davide Bosio, a current director of EMR who has been invited to join the board as a non-executive director.

Mr Bosio is the Managing Director of Pareto Capital, which specialises in offering professional corporate fundraising and advisory solutions to corporate clients.

Mr Bosio has over 12 years experience in the finance industry as a Corporate Advisor providing financial product advice focused on equity capital markets transactions. Mr Bosio

is currently a Fellow Member of the Financial Services Institute of Australia (Finsia) and a Graduate Member of Australian Institute of Company Directors (GAICD). Davide holds a Bachelor of Commerce (Marketing) degree and a Graduate Diploma in applied Finance and Investment.

## **Background to and reasons for the merger**

Ochre is a natural resources focused development and holding company, which primarily invests in Australia, New Zealand and the Americas.

In January 2011, Ochre completed the 100% acquisition of the Wonmunna Iron Ore project in the SE Pilbara region of Western Australia for A\$41.35m. Considerable value has since been added to the project, complementing the broader financing strategy of the company, which began in earnest, March 2013 with the signing of the Pareto Heads of Agreement.

It is anticipated that the Pareto Heads of Agreement will continue to deliver significant revenues to the company over time, whilst providing further support in unlocking the significant value that rests within the Wonmunna Iron Project.

OGH is currently the largest single shareholder of EMR with a holding of approximately 16% of the issued capital of EMR.

The merger offers shareholders of both companies the opportunity to enjoy the capital growth potential within EMR which is a significant shareholder in a US based shale exploration and development company, whilst also retaining exposure to a world-class development asset that is Wonmunna. The diversification across commodities, coupled with the comparative safety of Australia and the US as mining jurisdictions adds further weight to the significant financing capabilities of the merged group.

An exchange of shares under the proposed scheme where EMR will effectively become the new "Ochre" is considered to be the most effective way of implementing the merger.

The directors of OGH, after having considered a number of alternatives, strongly believe that this is the most suitable course, to provide OGH with an appropriate platform to undertake its growth initiatives.

Shareholders of both EMR and OGH will be able, through their shareholdings in the enlarged group, to obtain the enhanced value of OGH's ongoing activities whilst retaining exposure to the remaining assets within the EMR structure.

## **OGH Managing Director comments**

“Whilst Ochre Group remains committed and excited about the significant value that the Wonmunna project is anticipated to provide shareholders, the rationale behind combining the assets of OGH and Emerald cannot be ignored. Ochre’s vision continues to focus on the building, both organically and by acquisition, of a diversified, and disciplined natural resources development and holding company, with a strong emphasis on growth”.

## **EMR Board views**

OGH has been informed by EMR that Mr Rudisill has removed himself from discussions in relation to the proposed scheme because of his role as a director on each of the Boards of EMR and OGH. The remaining directors of EMR, are of the view that EMR should seek the views of an Independent Expert. If the conclusion of that Expert is that the proposed scheme is in the best interests of shareholders, then the proposed scheme will be put before EMR shareholders for approval in the terms provided for under the Corporations Act.

## **Next Steps**

The scheme taking effect is subject to a number of conditions precedent, including in particular:

- an independent expert’s report determining that the propose scheme is in the best interests of EMR shareholders;
- no material adverse change in respect of EMR occurs;
- the court approving the scheme in accordance with the Corporations Act;
- the EMR shareholders approving the scheme with the requisite majorities as specified in the Corporations Act;
- satisfaction of all other relevant regulatory conditions; and
- other conditions customary or typical for the implementation of a scheme of arrangement.

The Implementation Deed attached as Appendix 1 to this announcement, sets out the conditions precedent applicable to the proposed scheme, in full, in clause 3.1.

To assist EMR shareholders in making an informed decision in relation to approving the proposed scheme, an explanatory memorandum is expected to be provided to EMR shareholders in the first week of September 2013 setting out the full details of the proposed scheme and will include a full copy of the independent expert's report.

EMR is responsible for the preparation of the explanatory memorandum, in consultation with OGH in respect of information relating to OGH and the combined entity.

The indicative timetable for the proposal is as follows:

<b>Event</b>	<b>Date</b>
Execution of Implementation Deed	1 August 2013
First Court Date	20 September 2013
Scheme Meeting	1 November 2013
Second Court Date	6 November 2013

By Order of the Board  
Ochre Group Holdings Limited

For further information please contact:  
Nathan Featherby  
Managing Director  
+61 (02) 9425 0050

# APPENDIX 1

## IMPLEMENTATION DEED

Emerald Oil & Gas NL

ACN 112 283 520

("EMR")

Ochre Group Holdings Limited

ACN 008 877 745

("Ochre")

*Jeremy Shervington*

Barrister & Solicitor

52 Ord Street

WEST PERTH WA 6005

Telephone : (08) 9481 8760

Facsimile : (08) 9481 5142

Solicitors for Emerald Oil & Gas NL

**Contents**

- 1. Definitions and interpretations ..... 1**
  - 1.1 Definitions ..... 1
  - 1.2 Interpretation ..... 8
  - 1.3 Best and reasonable endeavours ..... 9
  - 1.4 Business Day ..... 9
- 2. Obligations in relation to Scheme ..... 9**
  - 2.1 EMR to propose Scheme..... 9
  - 2.2 Consideration ..... 9
  - 2.3 Sale Facility ..... 9
  - 2.4 Timetable ..... 9
  - 2.5 EMR Meeting..... 9
- 3. Conditions to Scheme ..... 10**
  - 3.1 Conditions ..... 10
  - 3.2 General obligations in relation to Conditions..... 11
  - 3.3 Obligations in relation to Regulatory Conditions ..... 12
  - 3.4 Regulatory Conditions ..... 12
  - 3.5 Regulatory matters ..... 12
  - 3.6 Notice in relation to satisfaction of Conditions..... 13
  - 3.7 Benefit and waiver of Conditions ..... 13
  - 3.8 Failure of Conditions..... 14
  - 3.9 Certificate ..... 14
- 4. Implementation of Scheme ..... 14**
  - 4.1 EMR's obligations in respect of the Scheme ..... 14
  - 4.2 Ochre's obligations in respect of the Scheme ..... 17
  - 4.3 Consideration ..... 18
  - 4.4 Ineligible Overseas Shareholders ..... 19
  - 4.5 Allotment and issue of Ochre Shares ..... 20
  - 4.6 Rounding entitlements..... 20
  - 4.7 Advertising and Communications ..... 20
- 5. Explanatory Memorandum principles ..... 20**
  - 5.1 Content of Explanatory Memorandum ..... 20
  - 5.2 Information ..... 21
  - 5.3 Co-operation to implement Scheme ..... 22
- 6. Conduct of business and access ..... 22**
  - Conduct of business ..... 22
- 7. Announcements..... 23**
  - 7.1 Announcement ..... 23
  - 7.2 Other public announcements..... 24
- 8. Recommendation and intentions in relation to the Scheme..... 24**
  - 8.1 EMR Board recommendation ..... 24
  - 8.2 EMR Director intentions..... 24
  - 8.3 Change of recommendation or intentions ..... 24
- 9. Exclusivity arrangements..... 25**
  - 9.1 No solicitation ..... 25

9.2	No talk and no due diligence .....	25
9.3	No commitments in respect of Competing Proposals.....	25
9.4	Competing Proposals .....	25
9.5	Exceptions.....	26
<b>10.</b>	<b>Liability of directors, officers and employees .....</b>	<b>26</b>
10.1	Liability of directors, officers and employees .....	26
10.2	Directors' and officers' insurance .....	27
10.3	Obligations in relation to directors' and officers' insurance.....	27
10.4	Enforceability of clause 10.2.....	27
<b>11.</b>	<b>Representations, warranties and indemnities .....</b>	<b>27</b>
11.1	Ochre representations and warranties .....	27
11.2	Ochre indemnity .....	27
11.3	EMR representations and warranties.....	27
11.4	EMR indemnity .....	28
11.5	Notifications.....	28
11.6	Status of representations and warranties.....	28
11.7	Status and enforcement of indemnities.....	28
<b>12.</b>	<b>Termination .....</b>	<b>28</b>
12.1	Termination by Ochre .....	28
12.2	Termination by EMR.....	29
12.3	Effect of termination.....	30
<b>13.</b>	<b>Confidentiality .....</b>	<b>30</b>
13.1	Non-disclosure of deed.....	30
13.2	Disclosure on termination of deed .....	30
<b>14.</b>	<b>Costs and stamp duty .....</b>	<b>30</b>
14.1	Costs.....	30
14.2	Stamp duty .....	30
<b>15.</b>	<b>Notices.....</b>	<b>31</b>
15.1	How notice to be given .....	31
15.2	When notice taken to be received.....	32
<b>16.</b>	<b>GST .....</b>	<b>32</b>
16.1	Interpretation .....	32
16.2	Reimbursements and similar payments .....	32
16.3	GST Payable .....	32
16.4	No Merger .....	33
<b>17.</b>	<b>General .....</b>	<b>33</b>
17.1	Amendments .....	33
17.2	Waiver .....	33
17.3	Further acts and documents .....	33
17.4	Consents.....	33
17.5	Counterparts.....	33
17.6	Entire agreement.....	34
17.7	No assignment .....	34
<b>18.</b>	<b>Governing law and jurisdiction.....</b>	<b>34</b>
18.1	Governing law .....	34
18.2	Jurisdiction .....	34

**Schedule 1: Timetable**

**Schedule 2: Ochre representations and warranties and Ochre Regulated Events**

**Schedule 3: EMR representations and warranties and EMR Regulated Events**

**Annexure A: Scheme**

**Annexure B: Deed Poll**

**Annexure C: Key terms of the Sale Facility**

## Implementation Deed dated

1 August 2013

**Between:** **Emerald Oil & Gas NL** ACN 112 283 520 of Ground Floor, 20 Kings Park Road, West Perth, Western Australia 6005 (“**EMR**”)

**Ochre Group Holdings Limited** ACN 008 877 745 of Level 9, 20 Hunter Street, Sydney, New South Wales 2000 (“**Ochre**”)

### Recitals:

- A. EMR and Ochre are admitted to the Official List of ASX.
- B. Ochre and EMR propose to merge by Ochre acquiring all of the Scheme Shares for the Scheme Consideration pursuant to a scheme of arrangement under section 411 of the Corporations Act.
- C. EMR has agreed to propose the Scheme and issue the Explanatory Memorandum at the request of Ochre, and EMR and Ochre have agreed to implement the Scheme on the terms and conditions of this deed.

### Now this Deed witnesses and the Parties covenant and agree as follows:

---

## 1. Definitions and interpretations

### 1.1 Definitions

In this deed unless the context or subject matter otherwise requires:

**Announcement** means an announcement in respect of the transactions contemplated by this deed in the form agreed by the parties.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ACN 008 624 691.

**ASX Listing Rules** means the official listing rules of ASX.

**Business Day** is any day that is a Business Day within the meaning given in the ASX Listing Rules.

**CHESS** means Clearing House Electronic Subregister System operated by ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532.

**Competing Proposal** means an Ochre Competing Proposal or an EMR Competing Proposal, as the case may be.

**Condition** means a condition of the Scheme set out in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement between EMR and Ochre dated 10 July 2013.

**Consideration** means Scheme Consideration.

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

**Court** means the Supreme Court of Western Australia, the Federal Court of Australia or such other court of competent jurisdiction as EMR and Ochre agree in writing.

**Deed Poll** means a deed poll to be executed by Ochre in favour of Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as EMR and Ochre agree in writing.

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

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

**Eligible Scheme Shareholder** means a Scheme Shareholder that is not an Ineligible Overseas Shareholder.

**EMR Board** means the board of directors of EMR.

**EMR Business** means the business carried on by EMR as at the date of this deed.

**EMR Competing Proposal** means any proposed transaction or arrangement (including any takeover bid, scheme of arrangement, share or asset sale, capital reduction or buy back, joint venture or dual listed company structure) under which a Third Party will or may, subject to satisfaction of conditions:

- (a) acquire control (as defined in section 50AA of the Corporations Act) of EMR;
- (b) become the holder of a Relevant Interest in 10% or more of the shares in EMR;
- (c) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the assets or business of EMR and its Subsidiaries;
- (d) otherwise acquire or merge with EMR; or
- (e) enter into any agreement or understanding requiring EMR to abandon, or otherwise fail to proceed with, the Scheme,

**EMR Director** means a director of EMR.

**EMR EM Information** means all information included in the Explanatory Memorandum, other than the Ochre EM Information and the Independent Expert's Report.

**EMR Group** means EMR and each of its Subsidiaries.

**EMR Regulated Event** means the occurrence of any of the events set out in Part B of Schedule 3, other than as required to be undertaken or procured by the EMR Group pursuant to this deed or the Scheme, and provided that an EMR Regulated Event will not include a matter:

- (a) which a party is permitted to do, or not to do, under clause 8.5 whilst the Exclusivity Period continues;
- (b) in relation to which Ochre has expressly consented in writing; or
- (c) fairly disclosed in writing to Ochre or which has been announced by EMR on ASX prior to the date of this deed.

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

**EMR Shareholder** means each person who is registered as a holder of an EMR Share.

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

**EMR Warranties** means the representations and warranties made by EMR in clause 11.3.

**End Date** means 6 months from the date of this deed or such later date agreed by the parties in writing.

**Excluded Shares** means any EMR Shares held by, or by any person on behalf of or for the benefit of, Ochre or its Related Bodies Corporate.

**Exclusivity Period** means the period commencing on the date of this deed and ending on the earlier of:

- (a) the date this deed is lawfully terminated in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

**Explanatory Memorandum** means the explanatory memorandum to be prepared by EMR in respect of the Scheme in accordance with the terms of this deed and to be despatched to EMR Shareholders.

**First Court Date** means the first day of hearing of an application made to the Court for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Group** means, in respect of a party, that party and its Subsidiaries.

**Implementation Date** means the date which is 5 Business Days after the Record Date or such other date as EMR and Ochre agree in writing.

**Independent Expert** means the independent expert to be engaged by EMR to express an opinion on whether the Scheme is in the best interests of EMR Shareholders.

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Explanatory Memorandum, and any updates to such report that the Independent Expert issues.

**Ineligible Overseas Shareholder** means an EMR Shareholder whose address as shown in the EMR Share Register at 5.00 pm on the Record Date is a place outside Australia and its external territories or New Zealand unless Ochre and EMR are satisfied, acting reasonably, that the laws of that EMR Shareholder's country of residence (as shown in the EMR Share Register) permit the issue and allotment of Ochre Shares to that EMR Shareholder, either unconditionally or after compliance with conditions which Ochre in its sole discretion regards as acceptable.

**Material Adverse Change** means, in respect of a party, any one or more events, occurrences or matters which individually or when aggregated with all such events, occurrences or matters of a like kind or category, has (or would be likely to have) the following effect:

- (a) an aggregate liability or expense of:
  - (i) A\$5m or more, in respect of EMR; and
  - (ii) A\$5 or more, in respect of Ochre,

to be sustained or incurred by the business, properties, financial condition, results, operations or prospects of that party's Group, taken as a whole, within the period of 5 years from the date of this deed, by EMR or Ochre (as the case may be); or

- (b) a diminution in cumulative cash flow of:
  - (i) A\$5m or more, in respect of EMR; and
  - (ii) A\$5m or more, in respect of Ochre,

within the period of 5 years from the date of this deed, by EMR or Ochre (as the case may be),

other than:

- (a) an event, occurrence or matter required to be undertaken or procured pursuant to this deed or the Scheme;
- (b) to the extent that an event, occurrence or matter was announced to the Stock Exchange or otherwise fairly disclosed in writing to the other party prior to the date of this deed;
- (c) as a result of the release of the Announcement;
- (d) any change (excluding changes to taxation laws or policies) in accounting standards, law, regulation or policy;
- (e) a change in the price of oil, gas or iron ore, or any other event, occurrence or matter affecting the oil and gas or iron ore industries generally;
- (f) general economic, financial, currency exchange, securities or commodity market conditions;
- (g) any outbreak or escalation of hostilities or armed conflict;
- (h) any change in the market price of EMR Shares or Ochre Shares; or
- (i) an event that affects the other party in a substantially consistent and proportionate manner.

**Material Adverse Matter** means, in respect of a party, any one or more events, occurrences or matters which individually or when aggregated with all such events, occurrences or matters of a like kind or category which has occurred but is not in the public domain at the date of this deed or has not been disclosed to the other party before the date of this deed and which had it occurred after the date of this deed would have been a Material Adverse Change.

**Ochre Board** means the board of directors of Ochre.

**Ochre Business** means the business carried on by Ochre as at the date of this deed.

**Ochre Competing Proposal** means any proposed transaction or arrangement (including any takeover bid, scheme of arrangement, share or asset sale, capital reduction or buy back, joint venture or dual listed company structure) under which a Third Party will or may, subject to satisfaction of conditions:

- (a) become the holder of interests in shares carrying 10% or more of the voting rights in Ochre, or otherwise acquires control of Ochre;

- (b) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the assets or business of Ochre and its Subsidiaries;
- (c) otherwise acquire or merge with Ochre; or
- (d) enter into any agreement or understanding requiring Ochre to abandon, or otherwise fail to proceed with, the Scheme,

**Ochre Director** means a director of Ochre.

**Ochre EM Information** means all information regarding Ochre and its Related Bodies Corporate (including information required to prepare the requisite pro forma financial statements and any other information reasonably requested by EMR to prepare disclosure regarding the merged EMR-Ochre entity) and the Scheme Consideration that is required by all applicable Australian laws, the ASX Listing Rules and the Policy Statements to be included in the Explanatory Memorandum (and any other information regarding Ochre or Ochre Shares that EMR or any of its Representatives reasonably requests) including all the information that would be required:

- (a) under section 636(1)(c), (g), (h), (i), (k)(ii), (l) and (m) of the Corporations Act to be included in a Ochre bidder's statement if Ochre were offering the Consideration as consideration under a takeover bid; and
- (b) to ensure the Explanatory Memorandum complies with the requirements of section 411(3) of the Corporations Act.

**Ochre Group** means Ochre and each of its Subsidiaries.

**Ochre Regulated Event** means the occurrence of any of the events set out in Part B of Schedule 2, other than as required to be undertaken or procured by the Ochre Group pursuant to this deed or the Scheme, provided that an Ochre Regulated Event will not include a matter:

- (a) which a party is permitted to do, or not to do, under clause 9.5 whilst the Exclusivity Period continues;
- (b) in relation to which EMR has expressly consented in writing; or
- (c) fairly disclosed in writing by Ochre or which has been announced by Ochre prior to the date of this deed.

**Ochre Share** means an ordinary share, credited as fully paid, in the capital of Ochre.

**Ochre Shareholder** means each person who is registered as a holder of an Ochre Share.

**Ochre Warranties** means the representations and warranties made by Ochre in clause 11.1.

**Official List** means the official list of securities that ASX has admitted but not removed.

**Official Quotation** means official quotation by ASX in accordance with the ASX Listing Rules.

**Placement Shares** means the shares in Ochre described in clause 3.1(p).

**Policy** means the directors and officers insurance policy effected by EMR at the date of this deed.

**Policy Statements** means all regulatory guides published by ASIC and in force at the date of this deed.

**Record Date** means the date which is 5 Business Days after the Effective Date.

**Regulatory Approvals** means any consents, approvals, clearances, decisions, determinations or other acts by a government agency necessary to implement the Scheme.

**Regulatory Authority** means:

- (a) any government, semi-government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission, administrative, fiscal or judicial body (including the Court), tribunal or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange, including without limitation the ASX.

**Regulatory Conditions** means the Conditions set out in clauses 3.1(h), 3.1(i), 3.1(j) and 3.1(q).

**Related Body Corporate** has the meaning given in section 9 of the Corporations Act.

**Relevant Interest** has the meaning given in section 9 of the Corporations Act.

**Representative** means, in respect of a party, its Related Bodies Corporate and each director, officer, employee, advisor, agent or representative of that party and its Related Bodies Corporate.

**Sale Agent** means a person appointed by Ochre to sell the Ochre Shares that are attributable to those eligible EMR Shareholders who are entitled to have the Ochre Shares sold through the Sale Facility under the terms of the Scheme.

**Sale Facility** means the share sale facility referred to in clause 4.2(h)(iv).

**Sale Nominee** has the meaning given in clause 4.4(a).

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between EMR and the Scheme Shareholders, substantially in the form set out in Annexure A or in such other form as EMR and Ochre agree in writing, pursuant to which all Scheme Shares will be transferred to Ochre on the Implementation Date.

**Scheme Consideration** means the consideration to be provided to Scheme Shareholders under the terms of the Scheme, being 1 Ochre Shares for every 2.75 Scheme Shares or if applicable, such other consideration as may be specified in a notice issued under clause 4.3(b).

**Scheme Meeting** means the meeting to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

**Scheme Share** means each EMR Share on issue at 5.00 pm on the Record Date other than the Excluded Shares.

**Scheme Shareholder** means each person who is registered in the EMR Share Register as a holder of a Scheme Share.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the

hearing of such application is adjourned for any reason, means the first day of the adjourned hearing and **Second Court Hearing** has a corresponding meaning.

**Stock Exchange** means ASX.

**Subsidiary** means a subsidiary within the meaning given to that term in section 9 of the Corporations Act.

**Superior Proposal** means:

- (a) in respect of EMR, a bona fide Competing Proposal which the EMR Board determines, acting in good faith and in order to satisfy what the EMR Board considers to be its fiduciary or statutory duties (after having taken written advice from its legal advisers):
  - (i) is reasonably capable of being implemented, taking into account all aspects of the EMR Competing Proposal, including its conditions precedent; and
  - (ii) would, if completed substantially in accordance with its terms, be more favourable to EMR Shareholders than the transactions contemplated by this deed, taking into account all the terms and conditions of the EMR Competing Proposal and the identity, reputation and financial standing of the party making the EMR Competing Proposal.
- (b) in respect of Ochre, a bona fide Competing Proposal which the Ochre Board determines, acting in good faith and in order to satisfy what the Ochre Board considers to be its fiduciary or statutory duties (after having taken written advice from its legal advisers):
  - (i) is reasonably capable of being implemented, taking into account all aspects of the Ochre Competing Proposal, including its conditions precedent; and
  - (ii) would, if completed substantially in accordance with its terms, be more favourable to Ochre Shareholders than the transactions contemplated by this deed, taking into account all the terms and conditions of the Ochre Competing Proposal and the identity, reputation and financial standing of the party making the Ochre Competing Proposal.

**Third Party** means a person who is neither a party to this deed, nor any Related Body Corporate of a party to this deed, including without limitation any individual, corporation, partnership, party, trust, fund, association and or other organised group of persons or combination of persons acting in concert by virtue of an agreement, arrangement, commitment or understanding which is not a party to this deed.

**Third Party Consent** means any consent, agreement, waiver, licence or approval from or by a party to an agreement involving EMR or a Subsidiary of Ochre which is agreed by EMR and Ochre to be, for the purposes of this deed, a Third Party Consent, on or before the date of this deed.

**Timetable** means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as may be agreed in writing by the parties.

## 1.2 Interpretation

In this deed headings and words in bold are for convenience only and do not affect the interpretation of this deed and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) 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 deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference to a statute includes any regulations or other instruments made under it and a reference to a statute or any regulation or other instrument made under it or a provision of any such statute, regulation or instrument includes consolidations, amendments, re-enactments and replacements;
- (i) a reference to a **liability** incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person;
- (j) a reference to a **loss** incurred by any person includes any loss, liability, damage, cost, charge, expense which the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all legal expenses (on a full indemnity basis without necessity of taxation) and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims;
- (k) a reference to any time is a reference to that time in Perth, Australia;
- (l) a reference to **A\$** or **dollar** is to Australian currency;
- (m) a reference to **US\$** is to the currency of the United States; and

- (n) this deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

### **1.3 Best and reasonable endeavours**

Any provision of this deed which requires a party to use best endeavours or reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs does not include any obligation:

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person; or
- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or any other amount required to be paid to a Regulatory Authority in order to complete the transactions contemplated in this deed,

except where that provision expressly specifies otherwise.

### **1.4 Business Day**

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

---

## **2. Obligations in relation to Scheme**

### **2.1 EMR to propose Scheme**

EMR agrees to propose and (subject to it becoming Effective) implement the Scheme on and subject to the terms and conditions of this deed.

### **2.2 Consideration**

Ochre covenants in favour of EMR that in consideration for the transfer to Ochre of Scheme Shares held by Scheme Shareholders under the terms of the Scheme, Ochre will, subject to the Scheme becoming Effective and clause 4.4, provide or cause to be provided the Consideration to Scheme Shareholders (for each Scheme Share held on the Record Date) in accordance with the terms of the Scheme, the Deed Poll and this deed.

### **2.3 Sale Facility**

An EMR Shareholder who is entitled to receive 1000 or less Ochre Shares (or such other number as may be agreed between Ochre and EMR in writing) under the Scheme may elect to have such Ochre Shares sold on its behalf pursuant to the Sale Facility.

### **2.4 Timetable**

Subject to clause 2.5 each party agrees to use its best endeavours to complete its obligations under this deed substantially in accordance with the Timetable.

### **2.5 EMR Meeting**

EMR must ensure (if necessary by adjournment) that the EMR Meeting is held no later than 3.00 pm Perth time on the day that is 1 Business Day prior to the Second Court Date.

---

### 3. Conditions to Scheme

#### 3.1 Conditions

The Scheme will not become Effective and the obligations of the parties in relation to the implementation of the Scheme will not be binding until each of the following conditions has been fulfilled or waived in accordance with clause 3.7:

- (a) no Material Adverse Change in respect of EMR occurs or becomes known to Ochre, and no Material Adverse Matter in respect of EMR becomes known to Ochre, after the date of this deed and before 8.00 am on the Second Court Date;
- (b) no EMR Regulated Event occurs or becomes known to Ochre after the date of this deed and before 8.00 am on the Second Court Date;
- (c) no Material Adverse Change in respect of Ochre occurs or becomes known to EMR, and no Material Adverse Matter in respect of Ochre becomes known to EMR, after the date of this deed and before 8.00 am on the Second Court Date;
- (d) no Ochre Regulated Event occurs or becomes known to EMR after the date of this deed and before 8.00 am on the Second Court Date;
- (e) the EMR Warranties are true and correct in all material respects on the date of this deed and as at 8.00 am on the Second Court Date (unless any warranty relates to an earlier date, in which case as at such date);
- (f) the Ochre Warranties are true and correct in all material respects on the date of this deed and as at 8.00 am on the Second Court Date (unless any warranty relates to an earlier date, in which case as at such date);
- (g) subject to clause 4.3, the Independent Expert issues the Independent Expert's Report which concludes that the Scheme is in the best interests of EMR Shareholders before the date on which the Explanatory Memorandum is registered by ASIC under the Corporations Act and the Independent Expert does not change that conclusion or withdraw its report prior to 8.00 am on the Second Court Date;
- (h) EMR Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act in relation to the Scheme Meeting convened by the Court;
- (i) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (j) before 8.00 am on the Second Court Date, ASIC has issued or provided such consents, waivers or approvals or done such other things as are reasonably necessary to implement the Scheme;
- (k) before 8.00 am on the Second Court Date, Ochre having received all necessary approvals from ASX to implement the Scheme (without invoking Chapter 11 of the Listing Rules) including for the conditional listing of Ochre Shares to be issued to Scheme Shareholders on ASX;
- (l) all Regulatory Approvals (other than those set out in clause 3.1(i)) are obtained before 8.00 am on the Second Court Date;

- (m) no Regulatory Authority has:
  - (i) undertaken a judicial proceeding seeking to enjoin, restrain or otherwise prohibit or impose adverse conditions on the Scheme which remain in effect as at 8.00 am on the Second Court Date;
  - (ii) issued an order, decree or ruling prohibiting or imposing adverse conditions on or otherwise preventing completion of the Scheme which remains in effect as at 8:00 am on the Second Court Date; or
  - (iii) declined to issue an order, decree, ruling, notification or communication by 8.00 am on the Second Court Date that is required for the Scheme to be implemented in accordance with this deed;
- (n) all Third Party Consents are granted or obtained in respect of the Transaction and those consents, agreements, waivers, licences or approvals are not withdrawn, cancelled or revoked before 8.00 am on the Second Court Date;
- (o) Prior to the conclusion of the Second Court Hearing no event occurs that would result in the number of Scheme Shares being less than 788,001,304 or exceeding 788,001,304;
- (p) Prior to the date of the Scheme Meeting Ochre having received binding applications for between 12,500,000 and 25,000,000 ordinary fully paid shares in the capital of Ochre at price of \$0.04 per share together with cleared funds of between \$500,000 and \$1,000,000 in respect of those binding applications, such applications being made on the basis that the relevant shares in the capital of Ochre will be allotted and issued at the same time as the Scheme Consideration is issued as contemplated by this deed;
- (q) an office copy of all orders of the Court approving the Scheme is lodged with ASIC under section 411(10) of the Corporations Act; and
- (r) no material breach of this deed by any party occurs before 8:00am on the Second Court Date.

### **3.2 General obligations in relation to Conditions**

Without prejudice to any other obligations of the parties under this deed:

- (a) EMR must use its best endeavours to ensure that the Conditions set out in clauses 3.1(a), 3.1(b) and 3.1(r) (insofar as clause 3.1(r) applies to material breaches by EMR) continue to be satisfied at all times until 8.00 am on the Second Court Date and that the Condition set out in clause 3.1(e) is satisfied as at the times set out in that clause;
- (b) Ochre must use its best endeavours to ensure that the Conditions set out in clauses 3.1(c), 3.1(d) and 3.1(r) (insofar as clause 3.1(r) applies to material breaches by Ochre) continue to be satisfied at all times until 8.00 am on the Second Court Date and that the Condition set out in clause 3.1(f) is satisfied at the times set out in that clause;
- (c) Ochre must use its best endeavours to ensure that the Condition set out in clause 3.1(p) is satisfied;
- (d) both parties must use their best endeavours to ensure (including by way of the timely provision of information) that the Independent Expert's Report is completed

before the date on which the Explanatory Memorandum is registered by ASIC under the Corporations Act; and

- (e) neither party shall take any action that will or is likely to hinder or prevent the satisfaction of any Condition except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this deed or is required by law.

### 3.3 Obligations in relation to Regulatory Conditions

Each party must use its best endeavours to ensure that the Regulatory Conditions are satisfied as soon as practicable after the date of this deed and in particular EMR and Ochre must each, as soon as practicable after the date of this deed, file or cause to be filed with each relevant Regulatory Authority any notifications required with regard to the transactions contemplated by the Scheme.

### 3.4 Regulatory Conditions

For the purposes of clause 3.1, where a Regulatory Condition is conditional, it will be regarded as:

- (a) having been obtained if the relevant condition:
  - (i) cannot reasonably be considered to have a material adverse change on the value that each party considered it would derive from implementation of the Scheme; and
  - (ii) does not impose unduly onerous obligations on any party (acting reasonably) in relation to the implementation of the Scheme or the operation of EMR or Ochre following implementation; and
- (b) not having been obtained if the relevant conditions do not satisfy the test in clause 3.4(a).

### 3.5 Regulatory matters

Without limiting clauses 3.2 and 3.3, EMR and Ochre:

- (a) must promptly apply for all relevant Regulatory Approvals and take all steps they are responsible for as part of the approval process, including responding to requests for information at the earliest practicable time;
- (b) have the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval (**Regulatory Communications**) and, without limitation:
  - (i) provide the other party with drafts of any material written Regulatory Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
  - (ii) provide copies of any material written Regulatory Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

### **3.6 Notice in relation to satisfaction of Conditions**

Each party must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its material progress towards satisfaction of the Conditions; and
- (b) in relation to any Condition notify the other party in writing upon becoming aware of:
  - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence the Condition has been satisfied; and
  - (ii) any fact or circumstance which results in that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms.

### **3.7 Benefit and waiver of Conditions**

- (a) The Conditions to the Scheme in clauses 3.1(c), 3.1(d) and 3.1(f) are for the sole benefit of EMR and any breach or non-fulfilment of those conditions may only be waived by EMR by notice in writing to Ochre.
- (b) The Condition(s) to the Scheme in clauses 3.1(a), 3.1(b), 3.1(e), and 3.1(o) are for the sole benefit of Ochre and any breach or non-fulfilment of those Conditions may only be waived by Ochre by notice in writing to EMR.
- (c) The Conditions to the Scheme in clauses 3.1(g), 3.1(h), 3.1(i), 3.1(j), 3.1(k), 3.1(m) and 3.1(q) are for the benefit of both parties and may not be waived.
- (d) The Condition to the Scheme in clause 3.1(r) is for the benefit of the non-defaulting party and may only be waived by the non-defaulting party in writing to the other.
- (e) A party entitled to waive a Condition under this clause 3.7 may do so in its absolute discretion.
- (f) If a waiver by a party of a Condition is itself expressed to be conditional and the other party does not accept the conditions thereto, the relevant Condition has not been waived.
- (g) If a party waives the breach or non-fulfilment of any of the Conditions, that waiver will preclude it from suing the other party for any breach of this deed that resulted from the breach or non-fulfilment of the Condition that was waived or arising from the same event which gave rise to the breach or non-fulfilment of the condition.
- (h) Unless expressed as such in the waiver, waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.
- (i) Any waiver must be in writing.

### **3.8 Failure of Conditions**

- (a) If any Condition that is stated in clause 3.7 to be for the benefit of a party (in this clause 3.8, **first party**) (whether or not the Condition is also stated to be for the benefit of the other party):
- (i) becomes incapable of satisfaction; or
  - (ii) has not been satisfied or waived in accordance with clause 3.7 before the End Date,

the first party may serve notice on the other party requiring it to consult in good faith with a view to extending the date for satisfaction of the relevant Condition, or adjourning or changing the date of the application to the Court for an order pursuant to section 411(4)(b) of the Corporations Act or determining whether the Scheme or a transaction which results in a merger of Ochre and EMR may proceed by way of an alternative approach and if so, to agree on the terms of such alternative approach.

- (b) If the parties are unable to reach agreement under clause 3.8(a) within 5 Business Days after the delivery of the notice under that clause, or no such notice is given within 5 Business Days of such notice first being capable of being delivered, the first party may, if the relevant Condition is a Condition to the Scheme, terminate this deed by notice in writing to the other party, provided that the first party shall not be permitted to terminate this deed in respect of the relevant Condition becoming incapable of satisfaction, or not being satisfied before the End Date, if a failure by such party to comply with its obligations under this deed directly and materially contributed to the relevant Condition becoming incapable of satisfaction, or not being satisfied before the End Date.

### **3.9 Certificate**

- (a) EMR (and, if necessary for the Scheme to proceed, Ochre) must provide to the Court at the Second Court Date a certificate confirming that all Conditions (other than the Conditions referred to in clause 3.1(i)) have been satisfied or waived in accordance with the terms of this deed.
- (b) Each party must provide to the other party:
- (i) a draft of the relevant certificate to be provided by it under clause 3.9(a) by 5pm on the day that is two Business Days prior to the Second Court Date; and
  - (ii) a copy of the final certificate provided by it to the Court on the Second Court Date.
- (c) The giving of a certificate under clause 3.9(a) will (in the absence of any dispute by the other party, manifest error, or a contradictory statement in a certificate or other evidence given by the other party) be conclusive evidence of the satisfaction or waiver of the Conditions referred to in that certificate.

---

## **4. Implementation of Scheme**

### **4.1 EMR's obligations in respect of the Scheme**

EMR must take all steps reasonably necessary to propose and implement the Scheme as soon as is reasonably practicable after the date of this deed and so as to complete the transaction

substantially in accordance with the Timetable (unless otherwise agreed by the parties acting reasonably and in good faith), and in particular EMR must:

- (a) prepare the Explanatory Memorandum in accordance with the requirements of all applicable laws, the orders of the Court, the ASX Listing Rules and the Policy Statements and clause 5, provide a draft to Ochre and provide Ochre with a reasonable opportunity to provide suggested amendments to that draft prior to the provision of a draft to ASIC under clause 4.1(c)(i) and if such suggested amendments relate to the Ochre EM Information, EMR must consider in good faith such suggested amendments unless such suggested amendments would render the Explanatory Memorandum misleading or deceptive;
- (b) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum;
- (c) as soon as reasonably practicable but no later than 14 days before the First Court Date provide an advanced draft of the Explanatory Memorandum:
  - (i) to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) to Ochre;
- (d) to the extent reasonably practicable:
  - (i) keep Ochre informed of any matters raised by ASIC in relation to the Explanatory Memorandum (and the resolution of those matters); and
  - (ii) use all reasonable endeavours to resolve any matters raised by ASIC in relation to the Explanatory Memorandum in consultation with Ochre;
- (e) apply to ASIC for the production of:
  - (i) statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme; and
  - (ii) a letter indicating whether ASIC intends to make submissions to the Court or to appear before the Court on the First Court Date.
- (f) as soon as practicable after confirmation referred to in clause 4.2(d)(i), procure a meeting of the Board of EMR to approve the Explanatory Memorandum for despatch to the shareholders of EMR (and provide Ochre with an extract of the relevant resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);
- (g) prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws, and provide Ochre with drafts of those documents for review and (acting reasonably and in good faith) take into account any comments from Ochre on those drafts;
- (h) provided that the confirmation referred to in clause 4.2(d)(i) has been received, lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing EMR to convene the Scheme Meeting;

- (i) if required, request ASIC to register the explanatory statement included in the Explanatory Memorandum in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (j) take all steps necessary to comply with the orders of the Court including, as required, dispatching the Explanatory Memorandum to the EMR Shareholders convening and holding the Scheme Meeting;
- (k) if the resolutions submitted to the Scheme Meeting in relation to the Scheme respectively are passed by the majorities required under section 411(4)(a) of the Corporations Act, apply to the Court for orders approving the Scheme;
- (l) if the Scheme is approved by the Court:
  - (i) promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) close the EMR Share Register as at 5.00 pm on the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and provide such information to Ochre (or its share registry) in such form as Ochre may reasonably require to facilitate the payment of the Scheme Consideration;
  - (iii) promptly execute all proper instruments of transfer and register all transfers of Scheme Shares to Ochre in accordance with the Scheme;
  - (iv) take all reasonable steps to maintain EMR's listing on ASX, notwithstanding any suspension of the quotation of EMR Shares, up to and including the Implementation Date, including making appropriate applications to ASX; and
  - (v) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (m) from the First Court Date until the Implementation Date, promptly inform Ochre if it becomes aware that the Explanatory Memorandum contains a statement which is misleading or deceptive in a material respect or contains a material omission;
- (n) If EMR becomes aware of information after the date of despatch of the Explanatory Memorandum that is material for disclosure to EMR's shareholders in deciding whether to approve the Scheme or that is required to be disclosed to EMR's shareholders under any applicable law, it must as expeditiously as practicable inform its shareholders of that information after consultation with Ochre and provide Ochre with drafts of any documents it proposes to the EMR shareholders and take into account (acting reasonably and in good faith) any comments from Ochre on those drafts;
- (o) As soon as practicable after the Record Date (and in any event at least 3 Business Days before the Implementation Date) give to Ochre or as it directs details of the names, registered addresses and holdings of EMR Shares of every EMR Shareholder as shown in EMR's share register as at the Record Date in such form as Ochre may reasonably require;
- (p) Subject to all applicable privacy laws and restrictions, promptly provide all necessary information, or have the share registry of EMR provide all necessary information, to Ochre about the Scheme and EMR shareholders in a form reasonably requested by Ochre and at least on a weekly basis which Ochre

reasonably requires so that Ochre may canvass approval of the Scheme by or discuss the Scheme with EMR's shareholders and facilitate the provision by Ochre of Scheme Consideration;

- (q) Promptly after they become available, publish on its website the date fixed for any Court hearing in relation to the Scheme, including any adjournments or continuance of the hearing, the date of the Scheme Meeting and the text of all announcements made to ASX in connection with the Scheme;
- (r) Only use the Ochre EM Information with the prior written consent of Ochre (not to be unreasonably withheld) until they become publicly available (other than pursuant to a breach of this clause); and
- (s) Promptly inform Ochre if EMR decides in its sole and absolute discretion whether to appeal any decision by the Court refusing to grant any order sought in respect of the Scheme where such order is essential to the implementation of the Scheme.

## **4.2 Ochre's obligations in respect of the Scheme**

Ochre must take all steps reasonably necessary to assist EMR to implement the Scheme as soon as is reasonably practicable and so as to complete the transaction substantially in accordance with the Timetable and in particular Ochre must:

- (a) provide to EMR the Ochre EM Information requested by EMR in a form specified by EMR as appropriate for inclusion in the Explanatory Memorandum (including, subject to clauses 4.1(a) and 4.2(d), consenting to the form and context in which the Ochre EM Information appears in the Explanatory Memorandum in reasonable time to allow EMR to prepare the final form of the Explanatory Memorandum in accordance with this deed);
- (b) promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (c) as soon as reasonably practicable after receipt from EMR of a draft of:
  - (i) the Explanatory Memorandum in accordance with clause 4.1(a), provide any suggested changes to the Ochre EM Information in that draft; and
  - (ii) documents necessary for the Court proceedings relating to the Scheme in accordance with clause 4.1(g), provide any suggested changes to that draft;
- (d) as soon as reasonably practicable after receipt from EMR of the draft of the Explanatory Memorandum provided in accordance with clause 4.1(c), and subject to EMR confirming that ASIC has produced the documents referred to in clause 4.1(e)(i), either:
  - (i) confirm in writing to EMR that the Ochre EM Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to EMR the changes required to ensure that the Ochre EM Information in the form and context in which it appears in the

Explanatory Memorandum is not misleading or deceptive and does not contain any material omission;

- (e) provide to EMR all such further or new information of which Ochre becomes aware after the First Court Date until the Implementation Date that is required to ensure that the Ochre EM Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission;
- (f) prior to the First Court Date, enter into (and procure that Ochre enters into) the Deed Poll and deliver executed versions to EMR;
- (g) procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Ochre will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (h) if the Scheme becomes Effective:
  - (i) procure that Ochre accepts a transfer of all Scheme Shares in accordance with the Scheme;
  - (ii) provide or cause to be provided the Scheme Consideration on the Implementation Date in accordance with the Scheme;
  - (iii) procure (or ensure that it has previously procured) that a share sale facility is established (and a Sale Nominee appointed) to deal with Ochre Shares that would otherwise be issued to Ineligible Overseas Shareholders in the manner contemplated by clause 4.4;
  - (iv) subject to complying with all applicable securities law requirements and all applicable regulatory requirements and subject to obtaining advice that it is permitted by applicable law and regulation without the need to prepare a prospectus (or equivalent document), which advice Ochre must promptly ask its advisers to provide, procure a share sale facility (on the key terms set out in Annexure C) (**Sale Facility**) is made available provided that its use must not affect the availability of exemptions for the issuance of the Ochre Shares in connection with the Scheme under applicable securities laws; and
  - (v) Issue the Placement Shares on the Implementation Date.

### **4.3 Consideration**

- (a) Ochre agrees (and covenants in favour of EMR) that, subject to the Scheme becoming Effective, in consideration of the transfer to Ochre of each Scheme Share held by a Scheme Shareholder under the Scheme, Ochre will provide or cause to be provided the Consideration to each Scheme Shareholder (for each Scheme Share held by it) on the Implementation Date.
- (b) The parties agree that if the Independent Expert's Report determines that the terms of the Scheme are not in the best interests of EMR Shareholders primarily because of a deficiency in the value of the Consideration offered by Ochre for the acquisition of the Scheme Shares, then Ochre may (but is not obliged) by notice in writing to EMR within 5 Business Days of the issue of the Independent Expert's Report, revise the Scheme Consideration specified in the Scheme by offering a

revised consideration for the Scheme Shares that is more consistent with the determination of the Independent Expert's Report.

- (c) Subject to clause 4.3(e) if Ochre gives notice to EMR under clause 4.3(b), EMR agrees to do all things reasonably necessary to give effect to the variation of the Scheme Consideration and terms, including:
- (i) executing and procuring the execution of all instruments reasonably necessary to vary this deed (and in particular Annexure A) to reflect the revised Scheme Consideration and terms (to the extent necessary);
  - (ii) seeking a new or amended Independent Expert's Report in respect of the revised terms of the Scheme;
  - (iii) amending and making all necessary consequential amendments to the Explanatory Memorandum, Court documents, notices, forms or other documents required to give effect to the Scheme, as amended; and
  - (iv) if required, amending the Timetable and reconvening any meetings or hearings to facilitate the performance of paragraphs 4.3(c)(i) to (iv) inclusive.
- (d) The parties acknowledge that without limiting the above, the Scheme Consideration for the purposes of the Scheme and this deed is deemed to be automatically amended to reflect the revised consideration specified in the notice given under clause 4.3(b).
- (e)
- (i) If Ochre gives notice to EMR under clause 4.3(b) and the new or amended Independent Expert's Report that is obtained pursuant to clause 4.3(c)(ii) concludes that the revised terms of the Scheme are not in the best interests of the EMR Shareholders then Ochre will be responsible for and will indemnify EMR against all costs and expenses incurred by EMR in meeting its obligations under clause 4.3(c) including, without limitation, the costs of obtaining the new or amended Independent Expert's Report;
  - (ii) Except as may be agreed between the parties in writing, any amendment to the Timetable pursuant to clause 4.3(c)(iv) will not involve the End Date extending beyond six months and two weeks from the date of this deed;
  - (iii) The right of Ochre to give notice under clause 4.3(b) can only be exercised once.

#### 4.4 Ineligible Overseas Shareholders

- (a) Ochre will be under no obligation under the Scheme to issue, and will not issue, any Ochre Shares to any Ineligible Overseas Shareholder, and instead Ochre will issue the Ochre Shares to which the Ineligible Overseas Shareholder would otherwise have been entitled (if they were an Eligible Scheme Shareholder) to a nominee appointed by Ochre (**Sale Nominee**).
- (b) Ochre will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the Sale Nominee:
- (i) sells on ASX all of the Ochre Shares issued to the Sale Nominee pursuant to clause 4.4(a) in such manner, or such financial market, at

such price and on such other terms as the Sale Nominee determines in good faith; and

- (ii) remits to Ochre the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Promptly after the last sale of Ochre Shares in accordance with clause 4.4(b), Ochre will pay to each Ineligible Overseas Shareholder the proportion of the net proceeds of sale received by Ochre pursuant to clause 4.4(b)(ii), to which that Ineligible Overseas Shareholder is entitled (calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per Scheme Share, subject to rounding).

#### **4.5 Allotment and issue of Ochre Shares**

Subject to the Scheme becoming Effective, Ochre must:

- (a) allot and issue the Ochre Shares on terms such that each Ochre Share will rank equally in all respects with existing Ochre Shares;
- (b) to the extent permitted by ASX, do everything reasonably necessary to ensure that trading in the Ochre Shares commences as soon as practicable after the Effective Date; and
- (c) ensure that on issue, each Ochre Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

#### **4.6 Rounding entitlements**

If the number of Scheme Shares held by a Scheme Shareholder is such that the aggregate entitlement of the Scheme Shareholder to Consideration is such that a fractional entitlement to a Ochre Share arises then the entitlement of that Scheme Shareholder must be rounded down to the nearest whole number of Ochre Shares.

#### **4.7 Advertising and Communications**

Each party must consult with the other (in advance, to the extent reasonably practicable) in relation to all advertising and communications (whether written or oral, and whether direct or via agents, consultants or advisers) with any Shareholders, Regulatory Authority, rating agency or media outlet relating to the Scheme (**Communications**) and, without limiting the generality of the foregoing, must:

- (a) provide the other party with drafts of any written Communications proposed to be issued and make such amendments thereto as the other party reasonably requires;
- (b) provide copies of all written Communications sent to a Shareholder, Regulatory Authority, rating agency or media outlet to the other party promptly upon dispatch; and
- (c) ensure all Communications are in accordance with all applicable laws.

---

## **5. Explanatory Memorandum principles**

### **5.1 Content of Explanatory Memorandum**

- (a) The parties agree that the Explanatory Memorandum will include or be accompanied by the following:

- (i) the terms of the Scheme;
  - (ii) the notice of the Scheme Meeting;
  - (iii) a summary of the key terms of this deed
  - (iv) a copy of the Deed Poll;
  - (v) a copy of the Independent Expert's Report;
  - (vi) a statement from the members of the EMR Board as contemplated by clauses 8.1 and 8.2;
  - (vii) the EMR EM Information; and
  - (viii) the Ochre EM Information.
- (b) EMR must not publish, nor make or consent to any modification or amendment of, any information contained in the Explanatory Memorandum without the express written consent of Ochre, (such consent not to be unreasonably withheld or delayed) it being acknowledged that where EMR is obliged by law or the ASX Listing Requirements it may publish or make or consent to any modification or amendment of any information contained in the Explanatory Memorandum without the express written consent of Ochre provided it has consulted with Ochre as to the content of such publication, modification or amendment.

## **5.2 Information**

- (a) EMR must take all reasonable steps to ensure that all information contained in the Explanatory Memorandum is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date which the Explanatory Memorandum is despatched to EMR Shareholders.
- (b) Ochre must take all reasonable steps to ensure all Ochre EM Information contained in the Explanatory Memorandum is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date which the Explanatory Memorandum is despatched to EMR Shareholders.
- (c) Each party must keep each other party informed of all further or new information which it becomes aware after the Explanatory Memorandum has been despatched until the last date of the Second Court Hearing that is material for disclosure to EMR Shareholders in deciding whether to approve the Scheme or that is required to be disclosed to shareholders under any applicable law.
- (d) In consultation with Ochre, EMR must ensure that the Explanatory Memorandum is updated by all such further or new information referred to in clause 5.2(c), so as to ensure that the Explanatory Memorandum is not misleading and deceptive in any material respect (whether by omission or otherwise)
- (e) Ochre undertakes to EMR that it will:
  - (i) undertake appropriate verification processes for all Ochre EM Information provided by Ochre to EMR for the purpose of inclusion in the Explanatory Memorandum;

- (ii) on request by EMR, provide EMR (and its advisers or representatives) with reasonable access to copies of all materials and documents used or created in connection with such verification processes; and
  - (iii) maintain such materials and documents for a period of not less than seven years from the date of this deed.
- (f) EMR undertakes to Ochre that it will:
- (i) undertake appropriate verification processes for all EMR EM Information prepared for the purpose of inclusion in the Explanatory Memorandum,
  - (ii) on request by Ochre, provide Ochre (and its advisers or representatives) with reasonable access to copies of all materials and documents used or created in connection with such verification processes; and
  - (iii) maintain such materials and documents for a period of not less than seven years from the date of this deed.

### **5.3 Co-operation to implement Scheme**

- (a) Each party agrees that the efficient preparation of the Explanatory Memorandum and implementation of the Scheme are in the interest of each of them and that they undertake to use all reasonable endeavours and apply all relevant resources to promptly perform their respective obligations under this deed and to implement that Scheme diligently and in accordance with the Timetable.

---

## **6. Conduct of business and access**

### **Conduct of business**

- (a) From the date of this deed to the Implementation Date, EMR must:
  - (i) conduct its businesses in the ordinary and proper course except in relation to any matter required to be done or procured by EMR pursuant to, or which is otherwise permitted by, this deed, the Scheme, or the undertaking of which Ochre has approved in writing, such approval not to be unreasonably withheld or delayed;
  - (ii) makes all reasonable efforts to:
    - A. keep available the services of its officers and employees; and
    - B. preserve its relationships with Regulatory Authorities, customers, suppliers, landlords, trade unions, licensors, licensees and others with whom they have business dealings;
  - (iii) not enter any lines of business or other activities in which it is not engaged at the date of this deed;
  - (iv) respond to any reasonable request from Ochre for information concerning the EMR Group and its business and operations; and
  - (v) subject to the confidentiality undertakings in the Confidentiality Agreement, provide Ochre and its Representatives reasonable access to its officers and employees, assets, properties, offices and other facilities,

and books and records, and otherwise provides reasonable co-operation to Ochre and its Representatives, for the purpose of doing all things necessary or desirable under this deed or the Scheme.

- (vi) not do anything that would constitute an EMR Regulated Event.
- (b) From the date of this deed to the Implementation Date, Ochre must:
- (i) conduct its businesses in the ordinary and proper course, except in relation to any matter required to be done or procured by Ochre pursuant to, or which is otherwise permitted by, this deed or the Scheme or the undertaking of which EMR has approved in writing, such approval not to be unreasonably withheld or delayed;
  - (ii) makes all reasonable efforts to:
    - A. keep available the services of its officers and employees; and
    - B. preserve its relationships with Regulatory Authorities, customers, suppliers, landlords, trade unions, licensors, licensees and others with whom they have business dealings;
  - (iii) not enter any lines of business or other activities in which it is not engaged at the date of this deed;
  - (iv) respond to any reasonable request from EMR for information concerning the Ochre Group and its business and operations; and
  - (v) subject to the confidentiality undertakings in the Confidentiality Agreement, provide EMR and its Representatives reasonable access to its officers and employees, assets, properties, offices and other facilities, and books and records, and otherwise provides reasonable co-operation to EMR and its Representatives, for the purpose of doing all things necessary or desirable under this deed or the Scheme.
  - (vi) not do anything that would constitute an Ochre Regulated Event.
- (c) From the date of this deed Ochre shall:
- (i) alter the remuneration arrangements in respect of its non executive directors such that as from the date of this deed the non executive chairman is paid \$60,000 per annum and the non executive directors are each paid \$30,000 per annum; and
  - (ii) alter the remuneration arrangements in respect of its company secretarial service provider such that from the date of this deed such services are provided at a cost of no more than \$80,000 per annum.

---

## **7. Announcements**

### **7.1 Announcement**

Immediately after the execution of this deed, EMR and Ochre must issue the Announcement to the ASX.

## **7.2 Other public announcements**

- (a) Subject to clause 7.2(b), each party must consult with the other prior to making any other public announcement in connection with the Scheme.
- (b) Where a party is required by law or the ASX Listing Rules to make any announcement or make any disclosure relating to a matter the subject of the Scheme, it must, to the extent practicable, consult with the other party as to the content of that announcement or disclosure, unless acting reasonably a party considers that an immediate announcement is required to be made.

---

## **8. Recommendation and intentions in relation to the Scheme**

### **8.1 EMR Board recommendation**

It is acknowledged that in the Announcement (and in any announcement regarding the proposed Scheme that may have been made prior to the execution of this deed) and in the Explanatory Memorandum members of the EMR Board may make such recommendations in relation to how EMR Shareholders vote in relation to the Scheme as they consider appropriate provided that any recommendation that EMR Shareholders vote in favour of the Scheme will be subject to there being an absence of a Superior Proposal for EMR and subject to the Independent Expert concluding that the Scheme is in the best interests of EMR Shareholders.

### **8.2 EMR Director intentions**

It is acknowledged that each EMR Director may declare in the Announcement (and in any announcement regarding the proposed Scheme that may have been made prior to the execution of this deed) and the Explanatory Memorandum his intention to vote in respect of the Scheme as he sees fit or to abstain from voting on the Scheme at his discretion provided that any such declaration to vote in favour of the Scheme will be stated to be in the absence of a Superior Proposal for EMR and subject to the Independent Expert concluding that the Scheme is in the best interests of EMR Shareholders.

### **8.3 Change of recommendation or intentions**

Without limiting clause 8.1 or clause 8.2, the EMR Board may change or withdraw its recommendation and any EMR Director may announce his or her intention to vote against the Scheme or to abstain from voting on the Scheme any EMR Shares in which they have a Relevant Interest and in respect of which they have power to vote, if:

- (a) the Independent Expert having given a report that, in the opinion of the Independent Expert, the Scheme is in the best interests of EMR Shareholders, gives a report changing that opinion for any reason to conclude that the Scheme is not in the best interests of EMR Shareholders;
- (b) the EMR Board determines, in the manner set out in clause 9.5(a), that an EMR Competing Proposal constitutes a Superior Proposal for EMR compared to the Scheme; or
- (c) the EMR Board has determined in good faith, having received expert advice as appropriate, that it must do so because of its duties to EMR (including having regard to the best interests of holders of EMR Shares).

---

## **9. Exclusivity arrangements**

### **9.1 No solicitation**

During the Exclusivity Period, each party must not, and must ensure that its respective Representatives do not, except with the prior written consent of the other party, directly or indirectly solicit or invite any Competing Proposal or expression of interest or offer which may lead to a Competing Proposal, or initiate discussions with any Third Party which may reasonably be expected to lead to a Competing Proposal, or communicate any intention to do any of those things.

### **9.2 No talk and no due diligence**

During the Exclusivity Period, each party must not, and must ensure that its respective Representatives do not, except with the prior written consent of the other party:

- (a) directly or indirectly participate or continue to engage in any discussions or negotiations in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal; or
- (b) provide or make available any information to a Third Party for the purposes of enabling that person to make an expression of interest, offer or proposal which may reasonably be expected to lead to a Competing Proposal.

### **9.3 No commitments in respect of Competing Proposals**

During the Exclusivity Period, the parties must not, and must ensure that their respective Representatives do not, except with the prior written consent of the other party, enter into any deed, arrangement or understanding in relation to a Competing Proposal requiring EMR or Ochre (as the case may be) to abandon, or otherwise fail to proceed with, the transactions the subject of this deed unless:

- (a) in respect of an EMR Competing Proposal, the EMR Board, acting in good faith and in order to satisfy what the EMR Board considers to be its fiduciary or statutory duties, determines that the EMR Competing Proposal is a Superior Proposal; or
- (b) in respect of an Ochre Competing Proposal, the Ochre Board, acting in good faith and in order to satisfy what the Ochre Board considers to be its fiduciary or statutory duties, determines that the Ochre Competing Proposal is a Superior Proposal.

### **9.4 Competing Proposals**

- (a) During the Exclusivity Period, each party must promptly notify the other party:
  - (i) of any approach or attempt to initiate, resume or continue discussions or negotiations with it or any of its Representatives with respect to a Competing Proposal; and
  - (ii) of any request for information relating to it or to its Group or any of their businesses or operations or any request for access to the books or records of it or its Group, other than requests occurring in the ordinary course of business.
- (b) A notification given under clause 9.4(a) must be accompanied by all relevant details of the relevant event, including the identity of the relevant person or persons and the key terms and conditions of any Competing Proposal or proposed Competing

Proposal (to the extent known) and must be provided no later than two Business Days from receipt of the approach, request, Competing Proposal or proposed Competing Proposal.

## **9.5 Exceptions**

The restrictions in clauses 9.1 and 9.2 and the obligations in clause 9.3 do not apply to the extent that they restrict a party from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited or invited, facilitated or initiated by that party or its Representatives in contravention of clause 9.1) provided that:

- (a) in respect of an EMR Competing Proposal, the EMR Board has determined, in good faith and acting reasonably, that:
  - (i) such bona fide EMR Competing Proposal could reasonably be considered to be a Superior Proposal; and
  - (ii) after receiving legal advice, failing to respond to such bona fide EMR Competing Proposal would constitute a breach of the EMR Board's fiduciary or statutory obligations;
- (b) in respect of an Ochre Competing Proposal, the Ochre Board has determined, in good faith and acting reasonably, that:
  - (i) such bona fide Ochre Competing Proposal could reasonably be considered to be a Superior Proposal; and
  - (ii) after receiving legal advice, failing to respond to such bona fide Ochre Competing Proposal would constitute a breach of the Ochre Board's fiduciary or statutory obligations.

---

## **10. Liability of directors, officers and employees**

### **10.1 Liability of directors, officers and employees**

To the extent permitted by law, each party (in this clause 10, **first party**) releases all rights against, and agrees that it will not make any claim against, each past or present director, officer or employee of the other party or their Related Bodies Corporate in relation to:

- (a) information provided to the first party in relation to the transactions contemplated by this deed; or
- (b) any breach of any representations, covenants and warranties of the first party in this deed,

to the extent that such director, officer or employee has acted in good faith and has not engaged in wilful misconduct.

## **10.2 Directors' and officers' insurance**

Subject to the Scheme becoming Effective, EMR may by no later than the Implementation Date arrange for the cover provided under the Policy to be amended so as to provide run off cover for a 7 year period from the Implementation Date. The extension of cover will be on terms that such extension cannot be amended to the detriment of the insureds or cancelled by any insured or the insurer under the Policy.

## **10.3 Obligations in relation to directors' and officers' insurance**

From the Implementation Date, Ochre must not:

- (a) vary or cancel the Policy;
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a director or officer of EMR under the Policy as amended pursuant to clause 10.2 above; or
- (c) for a period of 7 years from the Implementation Date, cancel or vary its existing policy of directors' and officers' liability insurance in any manner that would potentially prejudice the rights to indemnification or exculpation existing at the date of this deed in favour of current Ochre directors, officers, and employees who cease to hold such positions with Ochre on the Implementation Date.

## **10.4 Enforceability of clause 10.2**

- (a) Each party acknowledges that the release and agreement given by it under clause 10.1 is for the benefit of each past or present director and employee of the other party and may be enforced by such individuals directly against the first party.
- (b) Ochre acknowledges that its obligation under clause 10.3(c) is for the benefit of the Ochre directors, officers and employees in favour of whom the current liability insurance policy has been executed, and may be enforced by such individuals directly against Ochre.

---

# **11. Representations, warranties and indemnities**

## **11.1 Ochre representations and warranties**

Ochre represents and warrants to EMR (on EMR's own behalf and separately as trustee or nominee for each of EMR's directors and officers) on the terms set out in Part A of Schedule 2.

## **11.2 Ochre indemnity**

- (a) Ochre acknowledges that in entering into this deed EMR and each Representative of EMR have relied on the Ochre Warranties.
- (b) Subject to section 199A of the Corporations Act, Ochre indemnifies EMR (on its own behalf and separately as trustee for each Representative of EMR) against any loss suffered or incurred by reason of any breach of any of the Ochre Warranties.

## **11.3 EMR representations and warranties**

EMR represents and warrants to Ochre (on its own behalf and separately as trustee for each Ochre Representative) on the terms set out in Part A of Schedule 3.

### **11.4 EMR indemnity**

- (a) EMR acknowledges that in entering into this deed Ochre and each Representative of Ochre have relied on the EMR Warranties.
- (b) Subject to section 199A of the Corporations Act, EMR indemnifies Ochre (on its own behalf and separately as trustee for each Representative of Ochre) against any loss suffered or incurred by reason of any breach of any of the EMR Warranties.

### **11.5 Notifications**

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 11.

### **11.6 Status of representations and warranties**

Each representation and warranty in this clause 11:

- (a) is given as at the date of this document and as at 8:00am on the Second Court Date (except where a representation or warranty is expressed to be made on a particular date, then it is given only at that date);
- (b) is severable;
- (c) will survive the termination of this deed (subject to clause 11.6(d));
- (d) will not survive the completion of the Scheme and shall expire and be terminated on the Effective Date; and
- (e) is given with the intent that liability thereunder will not be confined to breaches of a representation or warranty which are discovered prior to the date of termination of this deed.

### **11.7 Status and enforcement of indemnities**

- (a) Each indemnity in this deed:
  - (i) is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed; and
  - (ii) is given to the party to which it is expressed to be given, and as trustee for each Representative of that party, and a reference to a loss in an indemnity given to a party includes a loss suffered or incurred by a Representative of that party.
- (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 deed.

---

## **12. Termination**

### **12.1 Termination by Ochre**

Ochre may terminate this deed at any time before 8.00 am on the Second Court Date by notice in writing to EMR:

- (a) in accordance with clause 3.8; or
- at any time before 8.00 am on the Second Court Date:
- (b) if there is a material breach of any of the EMR Warranties, or an EMR Regulated Event occurs, or a Material Adverse Change occurs in respect of EMR, provided that in each case Ochre is only entitled to terminate if it has given notice to EMR setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time such notice is received by EMR;
  - (c) if a majority of the EMR Board publicly recommends a Superior Proposal and does not change to a recommendation for the Scheme within three Business Days;
  - (d) if the Ochre Board publicly recommends to Ochre Shareholders any Superior Proposal;
  - (e) if EMR is in material breach of any of clause 3, clause 4.1, clause 5 or clause 6 before that time, provided that Ochre is only entitled to terminate if it has given notice to EMR setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time such notice is received by EMR;
  - (f) if the Court refuses to make any order directing EMR to convene the Scheme Meeting, provided that both Ochre and EMR have met and consulted in good faith that they do not wish to proceed with the Scheme;
  - (g) if EMR is in material breach of clause 7.1 or clause 7.2; or
  - (h) the Effective Date has not occurred on or before the End Date.

## **12.2 Termination by EMR**

EMR may terminate this deed at any time before 8.00 am on the Second Court Date by notice in writing to Ochre:

- (a) in accordance with clause 3.8; or
- at any time before 8.00 am on the Second Court Date:
- (b) if there is a material breach of any of the Ochre Warranties, or a Ochre Regulated Event occurs, or a Material Adverse Change occurs in respect of Ochre, provided that in each case EMR is only entitled to terminate if it has given notice to Ochre setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time such notice is received by Ochre;
  - (c) if the EMR Board publicly recommends to EMR Shareholders any Superior Proposal pursuant to clause 8.3;
  - (d) if the Court refuses to make any order directing EMR to convene the Scheme Meeting, provided that both Ochre and EMR have met and consulted in good faith that they do not wish to proceed with the Scheme;

- (e) if Ochre is in material breach of clause 3, clause 4.2, clause 5 or clause 6 before that time, provided that EMR is only entitled to terminate if it has given notice to Ochre setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time such notice is received by Ochre; or
- (f) the Effective Date has not occurred on or before the End Date.

### **12.3 Effect of termination**

In the event of termination of this deed by either EMR or Ochre pursuant to this clause 12, this deed will become void and have no effect, other than:

- (a) this clause 12 and clauses 1, 9, 10, 12, 13, 15, 16 and 17 which shall survive termination; and
- (b) in respect of any liability for an antecedent breach of this deed.

---

## **13. Confidentiality**

### **13.1 Non-disclosure of deed**

The parties refer to the Confidentiality Agreement between them and reaffirm their commitment to the terms of that agreement. However, to the extent that there is any inconsistency between the Confidentiality Agreement and this deed, the terms of this deed will prevail (unless otherwise indicated).

### **13.2 Disclosure on termination of deed**

The parties agree that, if this deed is terminated under clause 12.3, either party may disclose by way of announcement to a Stock Exchange the fact that this deed has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form of the announcement prior to its disclosure.

---

## **14. Costs and stamp duty**

### **14.1 Costs**

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

### **14.2 Stamp duty**

Ochre and EMR agree that Ochre:

- (a) must pay, or procure the payment by Ochre of, all stamp duty and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnifies EMR against any liability arising from failure to comply with clause 14.2(a); and

is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 14.2.

---

## **15. Notices**

### **15.1 How notice to be given**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (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):
  - (i) if to EMR:

Address: Ground Floor, 20 Kings Park Road, West Perth WA 6005

Email: [graeme@dwcorporate.com](mailto:graeme@dwcorporate.com)

For the attention of: Mr Graeme Smith

with a copy to: Mr Jeremy Shervington

Address: 52 Ord Street, West Perth, WA 6005

Email: [jds@fsps.com.au](mailto:jds@fsps.com.au)

For the attention of: Mr Jeremy Shervington
  - (ii) if to Ochre:

Address: Level 9, 20 Hunter Street, Sydney NSW 2000

Email: [nfeatherby@ochremanagement.com](mailto:nfeatherby@ochremanagement.com)

For the attention of: Mr Nathan Featherby

with a copy to: Mr Tony Chong

Address: c/- Lavan Legal, Level 19, 1 William Street, Perth, WA 6000

Email: [tony.chong@lavanlegal.com.au](mailto:tony.chong@lavanlegal.com.au)
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clause 15.1(b).

## 15.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of email) at the time of despatch as recorded on the sender's computer; and
- (d) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day (**working day** meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

---

## 16. GST

### 16.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 16.1(b), terms used in the clause have the meaning given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) "Input tax credit" has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 and a reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which another member of the same GST group is entitled.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause.

### 16.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

### 16.3 GST Payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with the deed then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must, subject to clause 16.3(b), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.

- (b) No payment of any amount pursuant to clause 16.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this deed pursuant to clause 16.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 16.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 16.3(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3(a).

#### **16.4 No Merger**

This clause shall not merge on completion of this deed.

---

## **17. General**

### **17.1 Amendments**

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

### **17.2 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 deed 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 deed.
- (b) A waiver or consent given by a party under this deed 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 deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

### **17.3 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 the other party to give effect to this deed.

### **17.4 Consents**

A consent required under this deed from a party may not be unreasonably withheld, unless this deed expressly provides otherwise.

### **17.5 Counterparts**

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

## **17.6 Entire agreement**

This deed embodies the entire understanding of EMR and Ochre and constitutes the entire terms agreed by EMR and Ochre in relation to the subject matter of this deed and together supersede any prior written or other agreement between EMR and Ochre in relation to that subject matter.

## **17.7 No assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

---

# **18. Governing law and jurisdiction**

## **18.1 Governing law**

This deed is governed by and must be construed according to the law applying in the state of Western Australia.

## **18.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the state of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; 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 18.2(a).

**Schedule 1 :  
Timetable**

<b>Event</b>	<b>Date</b>
Date of this deed and announcement	1 August 2013
First Court Date	20 September 2013
Scheme Meeting	1 November 2013
Second Court Date	6 November 2013

This timetable is indicative only.

## Schedule 2 : Ochre representations and warranties and Ochre Regulated Events

### Part A - representations and warranties

Ochre represents and warrants to EMR (on its own behalf and separately as trustee for each EMR Representative) except to the extent publicly announced prior to the date of this deed or fairly disclosed in writing to EMR prior to the date of this deed:

- (a) **(Corporate capacity and litigation)** on each date from the date of this deed and until (and including) the Second Court Date that:
- (i) it is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery of this deed by Ochre has been properly authorised by all necessary corporate action and Ochre has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
  - (iii) this deed constitutes legal, valid and binding obligations on it and this deed does not conflict with or result in a breach of or a default under:
    - A. the constitution of Ochre or any of its Related Bodies Corporate;
    - B. any writ, order or injunction, judgment, law, rule or regulation to which Ochre or any of its Related Bodies Corporate is party or bound by; or
    - C. any material contract to which Ochre or any of its Related Bodies Corporate is party that would entitle the counter-party or counter-parties thereto to terminate the contract;
  - (iv) neither Ochre nor any of its Related Bodies Corporate are engaged in any material litigation or arbitration proceedings relating to their businesses and there are no facts likely to give rise to any such proceedings; and
  - (v) it is aware that EMR and its Representatives will rely on the Ochre EM Information for the purposes of preparing the Explanatory Memorandum and proposing the Scheme in accordance with the requirements of the Corporations Act;
- (b) **(Securities)** as at the date of this deed there are:
- (i) 598,268,307 Ochre Shares on issue;
  - (ii) 7,500,000 (20cps – 12<sup>th</sup> August 2014) Ochre Options on issue,
- and Ochre has not issued (and is not required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert or be converted into Ochre securities.
- and Ochre (and the Ochre Board) will not, as a result of the Scheme or any other transaction contemplated by this deed, permit or allow (to the extent to which they are able) any acceleration or early vesting of any of the securities referred to above;
- (c) **(Approvals)** no consent, authorization or approval is required to be obtained by Ochre or its Subsidiaries in connection with the transactions contemplated under this deed from any

Regulatory Authority or any other person under any laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations, policies, guidelines, notices, judgments, orders, writs, injunctions, decisions, awards or directives, under the articles or bylaws of Ochre or its Subsidiaries, or pursuant to the terms of any agreement to which Ochre or its Subsidiaries is a party, other than any approval or consent contemplated by a Condition;

- (d) **(Ochre EM Information)** on the First Court Date and on each date from the date of the First Court Date until the Second Court Date:
- (i) the Ochre EM Information will be prepared and included in the Explanatory Memorandum in good faith and on the understanding that EMR, its directors and its officers will rely on that information for the purposes of considering and approving the EMR EM Information in the Explanatory Memorandum;
  - (ii) the Ochre EM Information in the Explanatory Memorandum does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission (other than a statement or omission which has been rectified by Ochre to the court's satisfaction by the Second Court Date); and
  - (iii) to the best of Ochre's knowledge and belief, the Ochre EM Information complies in all material respects with relevant laws (including the Corporations Act, ASX Listing Rules and relevant Policy Statements);
- (e) **(Information to Independent Expert)** on the First Court Date and on each date from the date of the First Court Date until the Second Court Date, all information provided by or on behalf of Ochre to the Independent Expert to enable their report to be included in the Explanatory Memorandum to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing their report for inclusion in the Explanatory Memorandum;
- (f) **(Financial statements)** Ochre's unaudited consolidated financial statements for the financial year ended 30 June 2013 present fairly, in all material respects, the financial position of Ochre as of 30 June 2013 and the results of its operations, its cash flows and changes in shareholders' equity and comprehensive loss for the year then ended in accordance with Australian generally accepted accounting principles;]
- (g) **(Continuous disclosure)** on the date of this deed, the First Court Date, the Scheme Meeting and the Second Court Date, following the making of the Announcement Ochre has complied in all respects with its continuous disclosure obligations under the Corporations Act and ASX Listing Rule 3.1 , and is not withholding any information from EMR which is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A (other than the fact of this deed, and the negotiations preceding it);
- (h) **(Solvency)** on each date from the execution of this deed until the Implementation Date, that Ochre will be solvent;
- (i) **(Consideration)** on the Implementation Date or as soon as reasonably practicable thereafter, that Ochre will be able to provide the Consideration;
- (j) **(No Ochre Regulated Event)** between the date of this deed and the Second Court Date, that a Ochre Regulated Event will not occur except in accordance with this deed;
- (k) **(Ochre Shares)** the Ochre Shares to be issued as the Scheme Consideration will be duly authorised and validly issued, fully paid, free of all security interests and third party rights and will rank equally with all other Ochre Shares then outstanding;

- (l) **(Other)** on each date from the First Court Date until the Implementation Date, that Ochre has complied with its obligations under clause 4.2(e);
- (m) **(Interest in EMR securities)** as at the date of this deed, Ochre's voting power (as that term is defined in the Corporations Act) in EMR is 16.494% and no member of the Ochre Group has any other Relevant Interest in any securities of EMR or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement); and
- (n) **(no Competing Proposal)** as at that date of this deed, Ochre is not in discussions or negotiations with any third party regarding any Competing Proposal.

### **Part B - Ochre Regulated Events**

Each of the following is a Ochre Regulated Event:

1. Ochre converting all or any of its shares into a larger or smaller number of shares;
2. any Ochre Group entity (other than a direct or indirect wholly-owned Subsidiary of Ochre) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
3. any Ochre Group entity (other than a direct or indirect wholly-owned Subsidiary of Ochre):
  - (a) entering into a buy-back agreement; or
  - (b) resolving to approve the terms of an arrangement substantially similar to a buy-back agreement under the Corporations Act;
4. any Ochre Group entity (other than a direct or indirect wholly-owned Subsidiary of Ochre) declaring, paying or distributing any dividend, bonus or other share of its profits or assets or agreeing to return any capital to its members;
5. any Ochre Group entity issuing securities or incurring any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other Ochre Group entity, other than:
  - (a) to Ochre or a direct or indirect wholly-owned Subsidiary of Ochre;
  - (b) any issue or grant contemplated by the Scheme;
  - (c) any Ochre Shares issued by Ochre as a result of the exercise of existing options, performance rights or other securities or instruments convertible into Ochre Shares which has been disclosed in writing to EMR prior to the date of this deed;
  - (d) any issue of options, performance rights or other securities which Ochre is required to make under the terms of an agreement entered into prior to the date of this deed which has been disclosed in writing to EMR prior to the date of this deed; and
  - (e) any other issue or grant disclosed by Ochre to EMR before the date of this deed;
6. a Ochre Group entity:
  - (a) acquiring or disposing of;
  - (b) agreeing to acquire or dispose of; or
  - (c) offering, proposing, announcing a bid or tendering for,

- any business, assets, entity or undertaking, the value of which in aggregate exceeds A\$5 million (or, in the case of a disposal, the book value (as recorded in Ochre's consolidated statement of financial position as at 30 June 2013) of which in aggregate exceeds A\$5 million);
7. an Ochre Group entity entering into any agreement or understanding restraining any Ochre Group entity from competing with any person or conducting activities in any market;
  8. an Ochre Group entity creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or substantially all, of its business or property otherwise than:
    - (a) in the ordinary course of business; or
    - (b) a lien which arises by operation of law securing an obligation that is not yet due;
  9. an Ochre Group entity:
    - (a) entering into any agreement or understanding (including in respect of finance debt) requiring payments, the incurring of expenditure or the foregoing of revenue by the Ochre Group in excess of an aggregate of A\$5 million or involving a commitment of more than 12 months;
    - (b) agreeing to any material variation to the terms of any agreement or understanding (including any variation made pursuant to a right or obligation in an agreement to vary or renegotiate terms of that agreement) which is material to the business, operations or financing arrangements of the Ochre Group;
    - (c) incurring or agreeing or committing to incur any new capital expenditure which is in excess of an aggregate of A\$5 million;
    - (d) agreeing to incur a liability or contingent liability with an amount or value greater than an aggregate of A\$5 million;
    - (e) enters into, offers to enter into, agrees to enter into any transaction; or is otherwise affected by any transaction or proposal under which any third party would acquire any legal or economic interest in, or there would be any diminution in the rights granted under any mineral tenement held by any member of the Ochre Group;
    - (f) waiving any third party default where the financial impact on the Ochre Group will be in excess of A\$5 million; or
    - (g) accepting as a compromise of a matter less than the full compensation due to a Ochre Group entity where the result of the compromise is that the member will receive an amount which is in excess of A\$5 million less than the amount of full compensation;
  10. an Ochre Group entity modifying or replacing its constitution;
  11. an Ochre Group entity providing financial accommodation other than to Ochre Group entities (irrespective of what form of finance debt that accommodation takes) in excess of \$5 million;
  12. an Ochre Group entity entering into any agreement with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity or currency derivatives or options) or similar instruments;
  13. an Ochre Group entity entering into a transaction with any related party of Ochre as defined in section 228 of the Corporations Act (other than another Ochre Group entity) the value of which exceeds A\$4 million;

14. an Ochre Group entity, other than in the ordinary course of business:
- (a) materially increasing the remuneration of, or paying any bonuses or issuing any securities to;
  - (b) accelerating any rights to benefits of any kind of;
  - (c) paying or agreeing to pay a termination payout (including a 'golden parachute') to;  
or
  - (d) materially amending any employment, consulting, board appointment, indemnification, severance or similar arrangement of or with,  
  
any of its officers or employees other than:
- (e) any Ochre Shares issued by Ochre as a result of the exercise of existing options, performance rights or other securities or instruments convertible into Ochre Shares;
  - (f) any issue of options, performance rights or other securities which the Ochre is required to make under the terms of an agreement entered into prior to the date of this deed; and
  - (g) any issue or grant disclosed by Ochre to EMR before the date of this deed.
15. an Ochre Group entity changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards or law to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standard or electing to form a consolidated group for the purposes of the Income Tax Assessment Act 1997 (Cth); and
16. any Ochre Group entity granting or agreeing to grant to any person in respect of any exploration or mining licence or equivalent right held by a Ochre Group entity (each a **Tenement**):
- (a) any interest in a Tenement, including an interest arising under a declaration of trust, an agreement for sale and purchase or an option agreement;
  - (b) any right to receive any product from a Tenement (or proceeds of the sale of any product) other than as a purchaser of product on bona fide arm's length terms;
  - (c) any rights of pre-emption, first refusal or like control over the disposal of a Tenement; or
  - (d) other legal or equitable rights against any Ochre Group entity which has the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in a Tenement itself,  
  
other than an occurrence:
17. which Ochre has fully and fairly disclosed:
- (a) in an announcement made to ASX prior to entry into this deed; or
  - (b) to EMR in writing prior to entry into this deed;
18. which is reasonably necessary as a result of an accident or emergency in the business or operations of the Ochre Group;

19. which is required to be undertaken or procured by the Ochre Group, or is contemplated, under this deed; or
20. for which Ochre has granted prior written approval, which approval must not be unreasonably withheld or delayed.

### **Schedule 3 :**

## **EMR representations and warranties and EMR Regulated Events**

#### **Part A - representations and warranties**

EMR represents and warrants to Ochre (on its own behalf and separately as trustee for each Ochre Representative) except to the extent announced to ASX prior to the date of this deed or fairly disclosed in writing to Ochre prior to the date of this deed:

- (a) **(Corporate capacity and litigation)** on each date from the date of this deed and until (and including) the Second Court Date that:
- (i) EMR is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery of this deed by EMR has been properly authorised by all necessary corporate action and EMR has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
  - (iii) this deed constitutes legal, valid and binding obligations on EMR and this deed does not conflict with or result in a breach of or default under:
    - A. the constitution of EMR or any of its Related Bodies Corporate;
    - B. any writ, order or injunction, judgment, law, rule or regulation to which EMR or any of its Related Bodies Corporate is party or bound by; or
    - C. any material contract to which EMR or any of its Related Bodies Corporate is party that would entitle the counter-party or counter-parties thereto to terminate the contract;
  - (iv) neither EMR nor any of its Subsidiaries are engaged in any material litigation or arbitration proceedings relating to their businesses and there are no facts likely to give rise to any such proceedings;
- (b) **(Securities)** as at the date of this deed there are:
- (i) 943,651,304 EMR Shares on issue; and
  - (ii) 117,600,000 5 cent 30 April 2014 options; and
  - (iii) 50,000,000 5 cent 28 June 2014 options,
- and EMR has not issued (and is not required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert or be converted into EMR securities and EMR (and the EMR Board) will not, as a result of the Scheme or any other transaction contemplated by this deed, permit or allow (to the extent to which they are able) any acceleration or early vesting of any of the securities referred to above;
- (c) **(Approvals)** no consent, authorization or approval is required to be obtained by EMR or its Subsidiaries in connection with the transactions contemplated under this deed from any Regulatory Authority or any other person under any laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations, policies, guidelines, notices, judgments, orders, writs, injunctions, decisions, awards or directives, under the constitution

of EMR or its Subsidiaries, or pursuant to the terms of any agreement to which EMR or its Subsidiaries is a party, other than any approval or consent contemplated by a Condition;

- (d) **(EMR EM Information)** as at the date the Explanatory Memorandum is despatched to EMR Shareholders, the Explanatory Memorandum registered with ASIC under section 412(6) of the Corporations Act (excluding Ochre EM Information) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (e) **(Information to Independent Expert)** on the First Court Date and on each date from the date of the First Court Date until the Second Court Date, all information provided by or on behalf of EMR to the Independent Expert to enable their report to be included in the Explanatory Memorandum to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing their report for inclusion in the Explanatory Memorandum;
- (f) **(Financial statements)** EMR's unaudited financial statements for the financial year ended 30 June 2013 present fairly in all material respects the financial position of EMR as of 30 June 2013, give a true and fair view of EMR's performance for the relevant periods, and comply with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001 (Cth);
- (g) **(Continuous disclosure)** on the date of this deed, the First Court Date, the Scheme Meeting and the Second Court Date, following the making of the Announcement EMR has complied in all respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and EMR is not withholding any information from Ochre which is being withheld from public disclosure in reliance on ASX Listing Rule 3.1A (other than the fact of this deed, and the negotiations preceding it);
- (h) **(Solvency)** on each date from the execution of this deed until the Implementation Date, that EMR will be solvent;
- (i) **(No EMR Regulated Event)** between the date of this deed and the Second Court Date, that an EMR Regulated Event will not occur except in accordance with this deed;
- (j) **(Other)** on each date from the First Court Date until the Implementation Date, EMR has complied with its obligations under clause 4.1(m);
- (k) **(No interest in Ochre securities)** as at the date of this deed, EMR's voting power (as that term is defined in the Corporations Act) in Ochre is nil and no member of the EMR Group has a Relevant Interest in any securities of Ochre or any other economic interest in any such securities (including any interest arising under a derivative or swap arrangement); and
- (l) **(no Competing Proposal)** as at that date of this deed, EMR is not in discussions or negotiations with any third party regarding any Competing Proposal.

### **Part B - EMR Regulated Events**

Each of the following is an EMR Regulated Event:

1. EMR converting all or any of its shares into a larger or smaller number of shares;
2. any EMR Group entity (other than a direct or indirect wholly-owned Subsidiary of EMR) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
3. any EMR Group entity (other than a direct or indirect wholly-owned Subsidiary of EMR):

- (a) entering into a buy-back agreement; or
  - (b) resolving to approve the terms of a buy-back agreement under the Corporations Act;
4. any EMR Group entity (other than a direct or indirect wholly-owned Subsidiary of EMR) declaring, paying or distributing any dividend, bonus or other share of its profits or assets or agreeing to return any capital to its members;
5. any EMR Group entity issuing securities or incurring any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other EMR Group entity, other than:
- (a) to EMR or a direct or indirect wholly-owned Subsidiary of EMR;
  - (b) any issue or grant contemplated by the Scheme;
  - (c) any EMR Shares issued by EMR as a result of the exercise of existing, performance rights or other securities or instruments convertible into EMR Shares which has been disclosed in writing to Ochre prior to the date of this deed;
  - (d) any issue of performance rights or other securities which EMR is required to make under the terms of an agreement entered into prior to the date of this deed which has been disclosed in writing to Ochre prior to the date of this deed; and
  - (e) any other issue or grant disclosed by EMR to Ochre before the date of this deed;
6. a EMR Group entity:
- (a) acquiring or disposing of;
  - (b) agreeing to acquire or dispose of; or
  - (c) offering, proposing, announcing a bid or tendering for,
- any business, assets, entity or undertaking, the value of which in aggregate exceeds A\$5 million (or, in the case of a disposal, the book value (as recorded in EMR's consolidated statement of financial position as at 30 June 2013) of which in aggregate exceeds A\$5 million);
7. a EMR Group entity entering into any agreement or understanding restraining any EMR Group entity from competing with any person or conducting activities in any market;
8. a EMR Group entity creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or substantially all, of its business or property otherwise than:
- (a) in the ordinary course of business; or
  - (b) a lien which arises by operation of law securing an obligation that is not yet due;
9. a EMR Group entity:
- (a) entering into any agreement or understanding (including in respect of finance debt) requiring payments, the incurring of expenditure or the foregoing of revenue by the EMR Group in excess of an aggregate of A\$5 million or involving a commitment of more than 12 months;

- (b) agreeing to any material variation to the terms of any agreement or understanding (including any variation made pursuant to a right or obligation in an agreement to vary or renegotiate terms of that agreement) which is material to the business, operations or financing arrangements of the EMR Group;
  - (c) incurring or agreeing or committing to incur any new capital expenditure which is in excess of an aggregate of A\$5 million;
  - (d) agreeing to incur a liability or contingent liability with an amount or value greater than an aggregate of A\$5 million;
  - (e) enters into, offers to enter into, agrees to enter into any transaction; or is otherwise affected by any transaction or proposal under which any third party would acquire any legal or economic interest in, or there would be any diminution in the rights granted under any mineral tenement held by any member of the EMR Group;
  - (f) waiving any third party default where the financial impact on the EMR Group will be in excess of A\$5 million; or
  - (g) accepting as a compromise of a matter less than the full compensation due to a EMR Group entity where the result of the compromise is that the member will receive an amount which is in excess of A\$5 million less than the amount of full compensation;
10. a EMR Group entity modifying or replacing its constitution;
11. a EMR Group entity providing financial accommodation other than to EMR Group entities (irrespective of what form of finance debt that accommodation takes) in excess of A\$5 million;
12. a EMR Group entity entering into any agreement with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity or currency derivatives or options) or similar instruments;
13. a EMR Group entity entering into a transaction with any related party of EMR as defined in section 228 of the Corporations Act (other than another EMR Group entity) the value of which exceeds A\$5 million;
14. a EMR Group entity, other than in the ordinary course of business:
- (a) materially increasing the remuneration of, or paying any bonuses or issuing any securities to;
  - (b) accelerating any rights to benefits of any kind of;
  - (c) paying or agreeing to pay a termination payout (including a 'golden parachute') to; or
  - (d) materially amending any employment, consulting, board appointment, indemnification, severance or similar arrangement of or with,
- any of its officers or employees other than:
- (e) any EMR Shares issued by EMR as a result of the exercise of existing performance rights or other securities or instruments convertible into EMR Shares;
  - (f) any issue of performance rights or other securities which the EMR is required to make under the terms of an agreement entered into prior to the date of this deed; and

- (g) any issue or grant disclosed by EMR to Ochre before the date of this deed.
15. a EMR Group entity changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards or law to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standard or electing to form a consolidated group for the purposes of the Income Tax Assessment Act 1997 (Cth); and
  16. any EMR Group entity granting or agreeing to grant to any person in respect of any exploration or mining licence or equivalent right held by a EMR Group entity (each a **Tenement**):
    - (a) any interest in a Tenement, including an interest arising under a declaration of trust, an agreement for sale and purchase or an option agreement;
    - (b) any right to receive any product from a Tenement (or proceeds of the sale of any product) other than as a purchaser of product on bona fide arm's length terms;
    - (c) any rights of pre-emption, first refusal or like control over the disposal of a Tenement; or
    - (d) other legal or equitable rights against any EMR Group entity which has the effect of placing the person in the same position as would exist if the person had acquired a legal or equitable interest in a Tenement itself,other than an occurrence:
  17. which EMR has fully and fairly disclosed:
    - (a) in an announcement made to ASX prior to entry into this deed; or
    - (b) to Ochre in writing prior to entry into this deed;
  18. which is in the ordinary course of business of the EMR Group;
  19. which is reasonably necessary as a result of an accident or emergency in the business or operations of the EMR Group;
  20. which is required to be undertaken or procured by the EMR Group, or is contemplated, under this deed; or
  21. for which Ochre has granted prior written approval, which approval must not be unreasonably withheld or delayed.

Signed as a deed.

**Executed by**  
**Emerald Oil & Gas NL ACN 112 283 520**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth):



(Signature of Secretary/other Director)

GRAEME SMITH

(Name of Secretary/other Director in full)



(Signature of Director)

JEREMY DAVID SHERVINGTON

(Name of Director in full)

**Executed by**  
**Ochre Group Holdings Limited**  
**ACN 008 877 745** in accordance with  
section 127 of the Corporations Act 2001  
(Cth):

(Signature of Secretary/other Director)

(Name of Secretary/other Director in full)

(Signature of Director)

(Name of Director in full)

Signed as a deed.

**Executed by  
Emerald Oil & Gas NL ACN 112 283 520**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth):

---

(Signature of Secretary/other Director)

---

(Name of Secretary/other Director in full)

**Executed by  
Ochre Group Holdings Limited  
ACN 008 877 745** in accordance with  
section 127 of the Corporations Act 2001  
(Cth):



---

(Signature of Secretary)

VAZRICK HOVANESSIAN

---

(Name of Secretary/in full)

---

(Signature of Director)

---

(Name of Director in full)



---

(Signature of Director)

IMANTS GUSTAVS KINS

---

(Name of Director in full)

**Annexure A :  
Scheme**

## **ANNEXURE A - SCHEME**

### **SCHEME OF ARRANGEMENT**

**Emerald Oil & Gas NL**

ACN 112 283 520

**(“EMR”)**

**Each person registered as a holder of fully paid ordinary shares in Emerald Oil & Gas NL on the Record Date.**

**(“Scheme Shareholder”)**

***Jeremy Shervington***

Barrister & Solicitor

52 Ord Street

WEST PERTH WA 6005

Telephone : (08) 9481 8760

Facsimile : (08) 9481 5142

Solicitors for Emerald Oil & Gas NL

**THIS SCHEME OF ARRANGEMENT** is made under section 411 of the Corporations Act 2001 (Cth).

**PARTIES:**

**EMERALD OIL & GAS NL** (ACN 112 283 520) of Ground Floor, 20 Kings Park Road, West Perth, Western Australia, 6005 (“**EMR**”).

The holders of fully paid ordinary shares in the capital of EMR as at the Record Date (“**Scheme Shareholders**”).

**1. DEFINITIONS AND INTERPRETATION**

**1.1. DEFINITIONS**

In this agreement, the following terms shall bear the following meanings:

**IOS Shares** has the meaning contemplated by clause 5.3.

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

**Sale Facility** means the sale facility referred to in clause 5.3.

**Scheme** means this scheme of arrangement subject to any alterations or conditions made or required to be made by the Court under section 411(6) of the Corporations Act and approved in writing by EMR and Ochre.

**Scheme Implementation Deed** means the scheme implementation deed entered into by EMR and Ochre dated 1 August 2013.

**Terms** that are not defined in this document and that are defined in the Scheme Implementation Deed have the same meaning in this document as given to the term in the Scheme Implementation Deed, unless the context makes it clear that a definition is not intended to apply.

**1.2. INTERPETATION**

In this document:

(a) any reference, express or implied, to any legislation in any jurisdiction includes:

- i. that legislation as amended, extended or applied by or under any other legislation made before or after the date of this document;
  - ii. any legislation made before or after the date of this document under that legislation, including (where applicable) that legislation as amended, extended or applied as described in subclause 1.2(a)(i), or under any legislation which it re-enacts as described in subclause 1.2(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associates of persons;
- (c) reference to an individual or a natural person include his estate and personal representatives;
- (d) the schedules and annexes form part of this document and, unless otherwise indicated, a reference to a clause, subclause, schedule or annex is a reference to a clause, subclause, schedule or annex of this document;
- (e) references to a party include the successor or assigns (immediate or otherwise) of that party;
- (f) a reference to any time is, unless otherwise indicated, a reference to that time in Perth, Australia; and
- (g) a reference to \$, A\$ or dollars is to Australian currency.

### **1.3. RULES OF INTERPRETATION AND CONSTRUCTION**

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word of any gender includes the corresponding words of any other gender;
- (c) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (d) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words; and
- (e) headings do not affect interpretation.

#### **1.4. THINGS REQUIRED TO BE DONE ON A BUSINESS DAY**

Unless otherwise indicated, if the day on which any act, matter or thing is to be done under this document is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

#### **2. PRELIMINARY MATTERS**

- (a) EMR is a public company registered in Australia and is a no liability company.
- (b) EMR has been admitted to the official list of the ASX. As at 31 July 2013, there were 943,651,304 EMR Shares on issue.
- (c) If the Scheme becomes Effective:
  - i. in consideration for the transfer of each Scheme Share to Ochre, EMR will procure Ochre to provide the Scheme Consideration to Scheme Shareholders in accordance with the Scheme; and
  - ii. all the Scheme Shares, and all rights and entitlements attaching thereto as at the Implementation Date, will be transferred to Ochre and EMR will enter the name of Ochre in the EMR Share Register in respect of the Scheme Shares.
- (d) EMR and Ochre have agreed, by executing the Scheme Implementation Deed, to implement the Scheme.
- (e) Ochre has agreed, by executing the Deed Poll, to perform its obligations under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders

#### **3. CONDITIONS OF THE SCHEME**

##### **3.1. Conditions precedent to the Scheme**

- (a) The Scheme is conditional on:
  - i. as at 8.00am on the Second Court Date, all the conditions in clause 3.1 of the Scheme Implementation Deed required to be satisfied by the End Date, having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
  - ii. approval of this Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act with or without modification as are acceptable to EMR and Ochre;

- iii. the Scheme Implementation Deed not having been terminated by either party to the Scheme Implementation Deed before 8.00am of the Second Court Date.
- (b) For the avoidance of any doubt, satisfaction of the conditions in clause 3.1(a) is a condition precedent to the operation of clause 4.
- (c) The Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date, or any later date to which Ochre and EMR agree, and without limiting any other rights under the Scheme Implementation Deed, each party is released from any further obligation to take steps to implement the Scheme and any liability in respect of the Scheme.

### **3.2. Confirmations in relation to conditions**

Certificates provided by each of Ochre and EMR pursuant to clause 3.9(a) of the Scheme Implementation Deed will (in the absence of any dispute by the other party, manifest error, or a contradictory statement in a certificate or other evidence given by the other party) constitute conclusive evidence as to whether or not those conditions, referred to in the certificate, have been satisfied or waived and shall be binding on each of Ochre and EMR, and on all EMR Shareholders and Scheme Shareholders.

## **4. IMPLEMENTATION OF SCHEME**

### **4.1. Lodgement of Court Orders**

EMR will, for the purposes of section 411(10) of the Corporations Act, lodge with ASIC copies of the Court orders under section 411(4)(b) of the Corporations Act approving the Scheme by 5.00pm (WST) on the first Business Day after the day on which the Court approves the Scheme.

### **4.2. Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, all of the Scheme Shares together with all rights and entitlements attaching thereto as at the Implementation Date, will be transferred to Ochre, without the need for any further act by any Scheme Shareholder (other than acts performed by EMR as attorney and agent for Scheme Shareholders under clause 8.5) by:
  - i. EMR delivering to Ochre duly completed and executed share transfer forms (or master share transfer form) to transfer all the Scheme Shares to Ochre; and

- ii. Ochre duly executing the share transfer forms (or master share transfer form), attending to stamping of the share transfer forms (or master share transfer form) (if required) and delivering the share transfer forms (or master share transfer form) to EMR for registration;
- (b) immediately after receipt of the share transfer forms (or master share transfer form) in accordance with clause 4.2(a), EMR must enter, or procure the entry of, the name, address and other relevant details of Ochre in the EMR Share Register in respect of all of the Scheme Shares; and
- (c) the transfer of Scheme Shares will be deemed to be effective.

### **4.3. Agreement by Scheme Shareholders**

Each Scheme Shareholder agrees to the transfer of their Scheme Shares in accordance with the terms of this Scheme.

## **5. PROVISION OF SCHEME CONSIDERATION**

### **5.1. Provision of Scheme Consideration**

- (a) Subject to clause 5.2, the obligation of Ochre to provide or procure the provision of the Scheme Consideration to Scheme Shareholders will be satisfied by Ochre:
  - i. in the case of Scheme Consideration that is required to be provided to Scheme Shareholders in the form of Ochre Shares:
    - A. on the Implementation Date, issuing to each Scheme Shareholders such number of Ochre Shares that the Scheme Shareholder is entitled to receive as Scheme Consideration in accordance with the Scheme. Where the calculation of the number of Ochre Shares to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a Ochre Share, the fractional entitlement will be rounded down to the nearest whole number of Ochre Shares;
    - B. on the Implementation Date, entering into the Ochre Share Register the name and address of each such Scheme Shareholder in relation to all the Ochre Shares which the Scheme Shareholder is entitled to receive as Scheme Consideration in accordance with the Scheme; and
    - C. as soon as practicable after the Implementation Date and in accordance with the ASX Listing Rules (but in any event within 5 Business Days after the Implementation Date), dispatching or procuring the dispatch of holding statement(s) to the address recorded in the EMR Share Register on the Record

Date for the Ochre Shares issue to each such Scheme Shareholder on the Implementation Date;

- ii. in the case of Scheme Consideration that is required to be dealt with as a result of the operation of clause 5.2,:
  - A. on the Implementation Date, and in accordance with clause 5.1(a)(i), issuing to the Sale Nominee such number of Ochre Shares as is necessary under clause 5.2;
  - B. on the Implementation Date, ensuring that the name and address of the Sale Nominee is entered into the Ochre Share Register in relation to those Ochre Shares which each Ineligible Overseas Shareholder would otherwise be entitled to; and
  - C. as soon as practicable after the Implementation Date and in accordance with the ASX Listing Rules (but in any event within 5 Business Days after the Implementation Date), dispatching or procuring the dispatch of a holding statement(s) to the Sale Nominee for the Ochre Shares issued to the Sale Nominee on the Implementation Date.
- (b) the case of any Scheme Shares held in joint names:
  - i. Ochre Shares issued under this Scheme will be issued to and registered in the names of the joint holders;
  - ii. any cheque required to be sent under this Scheme will be made payable and sent to the holder whose name appears first in the EMR Share Register as at the Record Date; and
  - iii. any uncertificated holding statements or other documents will be issued in the names of the joint holders and sent to the holder whose name appears first in the EMR Share Register as at the Record Date.
- (c) Upon issue:
  - i. all Ochre Shares comprising the Scheme Consideration will rank equally with all existing Ochre Shares; and
  - ii. each Ochre Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.
- (d) Binding instructions between a Scheme Shareholder and EMR relating to any EMR Shares (including, without any limitation, any instruction relating to payment of

dividends or to communication from EMR) will, from the Implementation Date, be deemed by reason of the Scheme to be a similarly binding instruction to and accepted by Ochre in respect of Ochre Shares issued to Scheme Shareholders until that instruction is revoked or amended in writing addressed to Ochre or the Ochre Share Register, provided that and to the extent EMR makes specific disclosure in writing to Ochre of such instructions prior to the Effective Date.

## 5.2. Foreign Holders

Ochre will be under no obligation under the Scheme to issue, and will not issue, any Ochre Shares as part of the Scheme Consideration to any Ineligible Overseas Shareholder and must instead procure that the number of Ochre Shares that would otherwise be issued to the Ineligible Overseas Shareholder, had they not been a Ineligible Overseas Shareholder, are dealt with on behalf of the Ineligible Overseas Shareholder in accordance with clause 5.3.

## 5.3. Sale Facility

(a) The Ochre Shares that would otherwise have been issued to Ineligible Overseas Shareholders under the Scheme (hereafter defined as “**IOS Shares**”), will be issued to the Sale Nominee on the Implementation Date in accordance with clause 5.1(a)ii.

(b) Ochre must:

- i. as soon as practicable after the Implementation Date, procure the Sale Nominee to sell the IOS Shares under the Sale Facility (in the manner set out in clause 5.3(c)); and
- ii. procure that the Sale Nominee pays to each Ineligible Overseas Shareholder an amount determined in accordance with the following formula and rounded to the nearest cent:

$$P \times (N/T)$$

where

**P** is the net sale proceeds received by the Sale Nominee (after deducting any applicable selling costs, tax and charges) for the sale of all of the IOS Shares;

**N** is the number of IOS Shares which would have otherwise being issued to that Ineligible Overseas Shareholder had it not been a Ineligible Overseas Shareholder.

**T** is the total number of IOS Shares which were issued to the Sale Nominee in accordance with this clause 5.3.

- (c) Both Ochre and EMR will procure that the Sale Nominee will sell the IOS Shares on the ASX in such manner (including selling the Ochre Shares in one or more lots), at such price and on such other terms as the Sale Nominee determines in good faith as soon as practicable after the Implementation Date, provided the Sale Nominee uses all reasonable endeavours to achieve the best price reasonably obtainable at the time of sale.
- (d) The parties acknowledge that none of Ochre, EMR or the Sale Nominee gives any undertaking, representation, warranty or assurance as to the price that will be achieved for the sale of the IOS Shares under the Sale Facility described in this clause 5.3.
- (e) Each Ineligible Overseas Shareholder acknowledges that the Sale Nominee is acting as principal in dealing with the Ochre Shares attributable to it and implementing the actions set out in this clause 5.3, and that the Sale Nominee is not a broker or other agent of the Ineligible Overseas Shareholder.
- (f) Payments of amounts referred to in this 5.3 will be made as soon as reasonably practicable by cheque in Australian dollars and sent by prepaid post (at the risk of the Ineligible Overseas Shareholder) to the address recorded in the EMR Share Register at the Record Date and, where applicable, in the manner set out in clause 5.1(b).

## **6. DEALINGS IN EMR SHARES**

- (a) To establish the identity of the Scheme Shareholders, dealings in EMR Shares will only be recognised if:
  - i. in the case of dealings of the type to be effected using CHESS, the transferee is registered in the EMR Share Register as the holder of the relevant EMR Shares before 7.00pm (WST) on the Record Date;
  - ii. in the case of all other dealings in EMR Shares, registrable transmission applications or transfers in respect of those dealings are received by the EMR Share Register before 5.00pm (WST) on the Record Date (in which case, EMR must register such transfers before 7.00pm (WST) on the Record Date); and
- (b) If the Scheme becomes Effective, Scheme Shareholders (and any person claiming through such holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.
- (c) EMR will not accept for registration, or recognise for any purpose, any transmission application or transfer in respect of EMR Shares received after the Record Date, other than a transfer of EMR Shares to Ochre pursuant to the Scheme or any subsequent transfer by Ochre to its successors in title.

- (d) For the purpose of determining entitlements to the Scheme Consideration, EMR must maintain the EMR Share Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been provided to all Scheme Shareholders. The EMR Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (e) All statements of holding and share certificates for EMR Shares will cease to have effect from 7.00pm (WST) on the Record Date as documents of title in respect of those securities and, as from that date, each entry current at that date on the EMR Share Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (f) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, EMR will ensure that details of the names, registered addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the EMR Share Register as at 7.00pm (WST) on the Record Date are available to Ochre in the form Ochre reasonably requires.

## **7. QUOTATION OF EMR SHARES**

- (a) On the Effective Date, EMR will apply to ASX to suspend trading on the ASX in EMR Shares with effect from close of trading on the Effective Date (or such earlier time as may be reasonably required to ensure that all trades made prior to the suspension may be completed so that the EMR Share Register may be amended accordingly prior to the time a person will be taken to be recognised as a Scheme Shareholder under clause 6(a)).
- (b) EMR will apply for termination of the official quotation of EMR Shares on the ASX, and to have itself removed from the official list of ASX, with effect from the Business Day immediately following the Implementation Date, or such later date as may be determined by Ochre in writing.

## **8. GENERAL SCHEME PROVISIONS**

### **8.1. Consent to Scheme amendments**

If the Court proposes to approve the Scheme subject to alterations or conditions, EMR may, by its counsel, consent on behalf of all persons concerned to those alterations or conditions to which Ochre has consented.

### **8.2. Scheme Shareholders' agreements and warranties**

- (a) Each Scheme Shareholder will do all things and execute all documents, instruments and transfers as may necessary or desirable to give effect to:

- i. the transfer their Scheme Shares to Ochre (together with all rights and entitlements attaching to those Scheme Shares) in accordance with this Scheme
  - ii. the terms of this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder acknowledges that the Scheme binds EMR, Ochre and all Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme at the Scheme Meeting).
  - (c) Each Scheme Shareholder agrees to be bound by Ochre's articles of incorporation and by-laws.
  - (d) Each Scheme Shareholder is taken to have warranted to EMR and Ochre that all of the EMR Shares registered in the name of that Scheme Shareholder as at the Record Date will, as at the Implementation Date, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties and from all other restrictions on transfer.
  - (e) Each Scheme Shareholder is taken to have warranted to EMR and Ochre that they have the full power and capacity to transfer their EMR Shares (together with all rights and entitlements attaching to those EMR Shares) to Ochre under the Scheme.
  - (f) Each Scheme Shareholder shall be deemed to have irrevocably appointed Ochre and each of its directors and officers (jointly and severally) as its attorneys for the purpose of executing any form of application, letter of transmittal or other instruments or documents required or prudent to effect the issue and allotment of the Ochre Shares.

### **8.3. Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the EMR Shares transferred under the Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) On and from the Implementation Date, Ochre will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by EMR of Ochre in the EMR Share Register as the holder of the EMR Shares.

### **8.4. Appointment of Sole Proxy**

From the Effective Date and until EMR registers Ochre as the holder of all Scheme Shares in the EMR Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Ochre as attorney and agent (and directed Ochre in each such capacity) to appoint any director, officer, secretary or agent nominated by

Ochre as its sole proxy and, where applicable and appropriate, corporate representatives to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign every shareholders' resolution;

- (b) undertakes not to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name or sign any shareholders' resolutions, whether in person, by proxy or corporate representative;
- (c) must take all other actions, in the capacity of a registered holder of Scheme Shares, as Ochre reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clauses 8.4(a) to (d) inclusive, Ochre or any officer or agent nominated by Ochre may act in the best interests of Ochre as the intended registered holder of the Scheme Shares.

#### **8.5. Power of Attorney**

- (a) Scheme Shareholders will be deemed to have authorised EMR, and all of its directors, officers and secretaries, to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary or desirable to implement the Scheme including (without limitation) executing, as agent and attorney of each Scheme Shareholder, a share transfer form (or master share transfer form) in relation to Scheme Shares as contemplated by clause 4.2(a).
- (b) Each Scheme Shareholder, without the need for any further act, irrevocably appoints EMR and all of its directors, officers and secretaries (jointly and severally) as its attorney and agent for the purpose of executing any document necessary to give effect to the Scheme including (without limitation), a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares.

#### **8.6. Enforcement of Deed Poll**

EMR undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against Ochre on behalf of, and as agent for, the Scheme Shareholders.

#### **8.7. Dividends**

Neither EMR nor Ochre will declare or pay any dividends on the EMR Shares or the Ochre Shares (as applicable) prior to the Implementation Date.

## **8.8. Effect of Scheme**

The Scheme binds EMR and all Scheme Shareholders from time to time and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of EMR.

## **9. General**

### **9.1. Costs & Stamp Duty**

The costs and stamp duty associated with the Scheme will be dealt with in accordance with the Scheme Implementation Deed.

### **9.2. Consent**

- (a) The Scheme Shareholders consent to EMR doing all things necessary or incidental to the implementation of the Scheme.
- (b) Each Scheme Shareholder acknowledges that this Scheme binds EMR and all Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting or vote against the Scheme at the Scheme Meeting).

### **9.3. Notices**

- (a) If a notice, transfer, transmission, application, direction or other communication referred to in the Scheme is sent by post to EMR, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at EMR's registered office or at the office of the EMR Share Registry.
- (b) The accidental omission to give notice of the Scheme Meeting to, or the non-receipt of notice of the Scheme Meeting by, any person entitled to receive notice shall not invalidate the proceedings at the Scheme Meeting.

### **9.4. Liability**

None of EMR, Ochre nor any of their respective directors, officers or employees shall have any liability for acts taken in good faith.

### **9.5. Governing Law**

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. Each party irrevocably

waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**9.6. Further action**

Each party to the Scheme Implementation Deed must, at its own expense, do all things and execute all documents necessary to give effect to the Scheme and the transactions contemplated by it.

**Annexure B :**  
**Deed Poll**

## **ANNEXURE B – DEED POLL**

**THIS DEED POLL** is made on

1 August 2013.

### **PARTIES:**

**OCHRE GROUP HOLDINGS LIMITED** (ACN 008 877 745) of Level 9, 20 Hunter Street, Sydney, New South Wales, 2000 (“**Ochre**”).

### **In favour of:**

Each Scheme Shareholder.

### **BACKGROUND**

- A. The directors of Emerald Oil & Gas NL (ACN 112 283 520 (“**EMR**”) have resolved that EMR should propose the Scheme.
- B. The effect of the Scheme will be that Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Ochre in exchange for the Scheme Consideration.
- C. On 1 August 2013, EMR and Ochre entered into a Scheme Implementation Deed (**Scheme Implementation Deed**).
- D. Under the Scheme Implementation Deed, Ochre has agreed to enter into this Deed Poll.
- E. Ochre is entering into this Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform certain of its obligations under the Scheme Implementation Deed and the Scheme.

### **IT IS AGREED:**

#### **1. DEFINITIONS AND INTERPRETATION**

##### **1.1. DEFINITIONS**

Words and definitions defined in the Scheme Implementation Deed have the same meanings in this Deed Poll unless the context requires otherwise.

## **1.2. INTERPETATION**

Clauses 1.2 to 1.4 of the Scheme Implementation Deed apply to the interpretation of this Deed Poll, except that references to “this deed” in clause 1.2 to 1.4 of the Scheme Implementation Deed are to be read as references to “this Deed Poll”.

## **2. NATURE OF DEED POLL**

Ochre acknowledges that this Deed Poll may be relied upon and enforced by any Scheme Shareholder in accordance with its terms, even though Scheme Shareholders are not party to it.

## **3. CONDITIONS AND TERMINATION**

### **3.1. Conditions**

Ochre’s obligations under clause 4 are subject to the Scheme becoming Effective.

### **3.2. Termination**

The obligations of Ochre under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect (unless Ochre and EMR otherwise agree in accordance with the Scheme Implementation Deed), if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms prior to the Scheme becoming Effective; or
- (b) the Scheme does not become Effective on or before the End Date.

### **3.3. Consequences of Termination**

If this Deed Poll is terminated under clause 3.2 then, in addition to and without prejudice to any other rights, powers or remedies available:

- (a) Ochre is released from its obligations to further perform this Deed Poll except for any obligations which are expressly provided under this Deed Poll to survive termination; and
- (b) Scheme Shareholders retain the rights they have against Ochre in respect of any breach of this Deed Poll which occurs before termination.

## **4. SCHEME CONSIDERATION**

### **4.1. Payment of Scheme Consideration**

Subject to clause 3, Ochre undertakes in favour of each Scheme Shareholder to:

(a) provide the Scheme Consideration to each Scheme Shareholder (other than an Ineligible Overseas Shareholder) in respect of the Scheme Shares held by that Scheme Shareholder in the following manner:

- i. on the Implementation Date, issuing to each Scheme Shareholder such number of Ochre Shares that the Scheme Shareholder is entitled to receive as Scheme Consideration in accordance with the Scheme. Where the calculation of the number of Ochre Shares to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a Ochre Share, the fractional entitlement will be rounded down to the nearest whole number of Ochre Shares;
- ii. on the Implementation Date, entering into the Ochre Share Register the name and address of each such Scheme Shareholder in relation to all Ochre Shares which the Scheme Shareholder is entitled to receive as Scheme Consideration in accordance with the Scheme; and
- iii. as soon as practicable after the Implementation Date and in accordance with the ASX Listing Rules (but in any event within 5 Business Days after the Implementation Date), dispatching or procuring the dispatch of holding statement(s) to the address recorded in the EMR Share Register on the Record Date for the Ochre Shares issue to each such Scheme Shareholder on the Implementation Date;

(b) procure to provide cash to each Ineligible Overseas Shareholder in respect of Scheme Shares held by that Ineligible Overseas Shareholder as at the Record Date in the following manner:

- i. on the Implementation Date and in accordance with clause 5.2 of the Scheme, issuing to the Sale Nominee such number of Ochre Shares that would otherwise have been issued to Ineligible Overseas Shareholders under the Scheme;
- ii. on the Implementation Date, ensuring that the name and address of the Sale Nominee is entered into the Ochre Share Register in relation to those Ochre Shares which each Ineligible Overseas Shareholder would otherwise be entitled to;
- iii. as soon as practicable after the Implementation Date and in accordance with the ASX Listing Rules (but in any event within 5 Business Days after the Implementation Date), dispatching or procuring the dispatch of holding statements to the Sale Nominee for the Ochre Shares issued to the Sale Nominee on the Implementation Date; and

- iv. procuring that the Sale Nominee sells the Ochre Shares issued to it on behalf of the Ineligible Overseas Shareholders and the proceeds are paid to the Scheme Shareholders in accordance with clause 5.3 of the Scheme; and
- (c) undertake all other actions attributed to it under the Scheme, subject to and in accordance with the Scheme.

#### **4.2. Ochre Shares**

Ochre covenants in favour of each Scheme Shareholder that the Ochre Shares issued as Scheme Consideration will:

- (a) be validly issued;
- (b) rank equally with all existing Ochre Shares on issue; and
- (c) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

#### **5. WARRANTIES**

Ochre represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and carry out the transactions contemplated by this Deed Poll; and
- (d) this Deed Poll has been duly and validly executed and delivered to Ochre and is valid and binding on it.

#### **6. CONTINUING OBLIGATIONS**

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until:

- (a) Ochre has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 3.

## **7. NOTICES**

The provisions of clause 15 of the Scheme Implementation Deed relating to notice being served on Ochre apply as if they were set out herein.

## **8. GENERAL**

### **8.1. Stamp Duty**

Ochre will:

- (a) pay or procure the payment of all stamp duties and any related fines and penalties (if any) in respect of the Scheme and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under the Scheme and this Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from a failure to comply with clause 8.1(a).

### **8.2. Assignment**

The rights and obligations of Ochre and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 8.2 is invalid.

### **8.3. Severability**

The provisions contained in each clause and sub-clause of this Deed Poll shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid.

### **8.4. Waiver**

Ochre may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and is signed by the Scheme Shareholder granting the waiver.

### **8.5. Variation**

A provision of this Deed Poll may be varied if the variation is:

- (a) agreed by EMR, which agreement EMR may give or withhold in its absolute discretion and without reference to or approval by any Scheme Shareholder; and
- (b) the Court indicates that the amendment would not itself preclude approval of the Scheme;

in which event Ochre will enter into a further Deed Poll in favour of each Scheme Shareholder and giving effect to the amendment.

#### **8.6. Cumulative Rights**

The rights, powers and remedies of Ochre and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.

#### **8.7. Governing law and jurisdiction**

This Deed Poll and any non-contractual obligations arising out of or in connection with it are governed by the law applying in Western Australia. The courts having jurisdiction in Western Australia have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in Western Australia.

#### **8.8. Further assurances**

Ochre will, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll.

**EXECUTED** as a Deed Poll.

**Annexure C :**  
**Key terms of the Sale Facility**

## ANNEXURE C – KEY TERMS OF SALE FACILITY

### 1.1. Interpretation

Terms that are not defined in this document and that are defined in the Scheme Implementation Deed or Scheme have the same meaning in this document as given to the term in the Scheme Implementation Deed or the Scheme, unless the context makes it clear that a definition is not intended to apply.

### 1.2. Foreign Holders

Ochre will be under no obligation under the Scheme to issue, and will not issue, any Ochre Shares as part of the Scheme Consideration to any Ineligible Overseas Shareholder and must instead procure that the number of Ochre Shares that would otherwise be issued to the Ineligible Overseas Shareholder, had they not been a Ineligible Overseas Shareholder, are dealt with on behalf of the Ineligible Overseas Shareholder in accordance with clause 5.3 of the Scheme.

### 1.3. Sale Facility

- (a) The Ochre Shares that would otherwise have been issued to Ineligible Overseas Shareholders under the Scheme (hereafter defined as “**IOS Shares**”), will be issued to the Sale Nominee on the Implementation Date in accordance with clause 5.3 of the Scheme.
- (b) Ochre must:
- i. as soon as practicable after the Implementation Date, procure the Sale Nominee to sell the IOS Shares under the Sale Facility (in the manner set out in clause 5.3(c) of the Scheme); and
  - ii. procure that the Sale Nominee pays to each Ineligible Overseas Shareholder an amount determined in accordance with the following formula and rounded to the nearest cent:

$$P \times (N/T)$$

where

P is the net sale proceeds received by the Sale Nominee (after deducting any applicable selling costs, tax and charges) for the sale of all of the IOS Shares;

- N is the number of IOS Shares which would have otherwise being issued to that Ineligible Overseas Shareholder had it not been a Ineligible Overseas Shareholder.
- T is the total number of IOS Shares which were issued to the Sale Nominee in accordance with this clause 5.3 of the Scheme.
- (c) Both Ochre and EMR will procure that the Sale Nominee will sell the IOS Shares on the ASX in such manner (including selling the Ochre Shares in one or more lots), at such price and on such other terms as the Sale Nominee determines in good faith as soon as practicable after the Implementation Date, provided the Sale Nominee uses all reasonable endeavours to achieve the best price reasonably obtainable at the time of sale.
- (d) None of Ochre, EMR or the Sale Nominee gives any undertaking, representation, warranty or assurance as to the price that will be achieved for the sale of the IOS Shares under the Sale Facility described in this clause 5.3 of the Scheme.
- (e) Each Ineligible Overseas Shareholder acknowledges that the Sale Nominee is acting as principal in dealing with the Ochre Shares attributable to it and implementing the actions set out in this clause 5.3 of the Scheme, and that the Sale Nominee is not a broker or other agent of the Ineligible Overseas Shareholder.
- (f) Payments of amounts referred to 5.3 of the Scheme will be made as soon as reasonably practicable by cheque in Australian dollars and sent by prepaid post (at the risk of the Ineligible Overseas Shareholder) to the address recorded in the EMR Share Register at the Record Date and, where applicable, in the manner set out in clause 5.1(b) of the Scheme.
- (g) The key terms described above are not intended to exhaustively describe the terms of the Sale Facility. Without limitation, Ochre may include additional terms as it considers reasonably necessary to extend the application of the Sale Facility to include EMR Shareholders who have elected to have their entitlement to Ochre Shares sold on their behalf under the Sale Facility pursuant to clause 2.3 of the Implementation Deed.
- (h) Any of the above key terms may be amended with the written agreement of EMR and Ochre.