

# BIDDER'S STATEMENT

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OFFER BY

**CONFEDERATE CAPITAL PTY LTD**

ACN 166 032 891

TO ACQUIRE 30% OF YOUR SHARES IN

**EMERALD OIL AND GAS NL**

ACN 009 795 046

AT 1.4 CENTS PER SHARE IN CASH

THE OFFER IS SCHEDULED TO CLOSE ON 30 NOVEMBER 2013, UNLESS EXTENDED

CONFEDERATE'S LEGAL ADVISER

**STEINPREIS PAGANIN**   
Lawyers & Consultants

THIS IS AN IMPORTANT DOCUMENT AND REQUIRES YOUR IMMEDIATE ATTENTION. IF YOU ARE IN ANY DOUBT AS TO HOW TO ACT, YOU SHOULD CONSULT YOUR FINANCIAL OR LEGAL ADVISER AS SOON AS POSSIBLE.

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## **IMPORTANT INFORMATION**

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This Bidder's Statement is issued by Confederate Capital Pty Ltd (ACN 166 032 891) (**Confederate**) under Part 6.5 of the Corporations Act.

A copy of this Bidder's Statement was lodged with ASIC on 11 October 2013. Neither ASIC nor its officers take any responsibility for the content of this Bidder's Statement.

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## **INVESTMENT ADVICE**

In preparing this Bidder's Statement, Confederate has not taken into account the individual objectives, financial situation or needs of individual Emerald Shareholders. Accordingly, before making a decision whether or not to accept the Offer, you may wish to consult with your financial or other professional adviser.

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## **DISCLAIMER AS TO FORWARD LOOKING STATEMENTS**

Some of the statements appearing in this Bidder's Statement may be in the nature of forward looking statements. You should be aware that such statements are only predictions and are subject to inherent risks and uncertainties. Those risks and uncertainties include factors and risks specific to the industry in which Emerald and Confederate and the members of the Emerald Group operate as well as general economic conditions, prevailing exchange rates and interest rates and conditions in the financial markets. Actual events or results may differ materially from the events or results expressed or implied in any forward looking statement. None of Confederate, the officers of Confederate or any persons named in this Bidder's Statement with their consent or any person involved in the preparation of this Bidder's Statement, makes any representation or warranty (express or implied) as to the accuracy or likelihood of fulfilment of any forward looking statement, or any events or results expressed or implied in any forward looking statement, except to the extent required by law. You are cautioned not to place undue reliance on any forward looking statement. The forward looking statements in this Bidder's Statement reflect views held only as at the date of this Bidder's Statement.

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## **DISCLAIMER AS TO EMERALD INFORMATION**

The information on Emerald and Emerald's securities contained in this Bidder's Statement has been prepared by Confederate using publicly available information.

Information in this Bidder's Statement concerning Emerald's business has not been independently verified by Emerald. Accordingly Confederate does not, subject to the Corporations Act, make any representation or warranty, express or implied, as to the accuracy or completeness of such information.

Further information relating to Emerald's business may be included in Emerald's Target's Statement which Emerald must provide to its shareholders in response to this Bidder's Statement.

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## **PRIVACY**

Confederate has collected your information from the Emerald register of shareholders for the purpose of making this Offer and, if accepted, paying you the cash consideration under the Offer. The Corporations Act requires the name and address of

shareholders to be held in a public register. Your information may be disclosed on a confidential basis to Confederate's related bodies corporate and external service providers, and may be required to be disclosed to regulators such as ASIC. The registered address of Confederate is Level 1, 248 Hay Street, Subiaco WA 6008.

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## **DEFINED TERMS**

A number of defined terms are used in this Bidder's Statement. Unless the contrary intention appears, the context requires otherwise or words are defined in section 10 of this Bidder's Statement, words and phrases in this Bidder's Statement have the same meaning and interpretation as in Chapter 6 of the Corporations Act.

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## **KEY DATES**

|   |                               |
|---|-------------------------------|
| Date of this Bidder's Statement             | 11 October 2013               |
| Date of Offer                               | 29 October 2013               |
| Offer closes (unless extended or withdrawn) | 5pm (WST) on 30 November 2013 |

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## **KEY CONTACTS**

### **Share registrar for the Offer**

Security Transfer Registrars Pty Ltd

770 Canning Highway

APPLECROSS WA 6153

Phone: +61 8 9315 2333

Email: [registrar@securitytransfer.com.au](mailto:registrar@securitytransfer.com.au)

\* Calls to this number may be recorded

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## LETTER FROM THE CHAIRMAN

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11 October 2013

Dear fellow Emerald Shareholder,

### **PROPORTIONAL TAKEOVER OFFER FOR EMERALD**

I am pleased to enclose our Offer to acquire 30% of your Shares in Emerald Oil and Gas NL for a price of 1.4 cents cash per Emerald Share. As you may know, Confederate's Associates, P&L and Desertfox, currently hold a relevant interest in approximately 19.99% of Emerald Shares on issue.

The reasons why Confederate believes you should accept the Offer are as follows:

- Confederate's Offer represents a substantial premium for 30% of your Emerald Shares;
- Confederate's Offer allows you to realise definite cash value for 30% of your Emerald Shares;
- Confederate's Offer gives you the opportunity to receive value now for part of your shareholding and benefit from any future potential upside of Emerald in respect of your remaining shareholding; and
- Emerald's share price may fall if Confederate's Offer does not succeed.

Detailed information in respect of Confederate's Offer is set out in this Bidder's Statement. You should read this Bidder's Statement in its entirety, including the conditions to the Offer.

Confederate's Offer is open for acceptance until 5pm (WST) on 30 November 2013, unless extended.

I urge you to ACCEPT the Offer as soon as possible. To accept the Offer, you should follow the instructions detailed in the enclosed Acceptance Form and in section 4 of the Annexure to this Bidder's Statement.

If you require additional assistance, please contact your stockbroker, accountant or financial adviser.

Yours sincerely,

---

Tim Kestell  
Chairman

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## 1. WHY YOU SHOULD ACCEPT THE OFFER

### 1.1 Confederate's Offer represents a substantial premium for 30% of your Emerald Shares

Confederate's Offer of 1.4 cents cash per Emerald Share represents a substantial premium to the historical trading prices of Emerald Shares:

- (a) a 16.67% premium to the closing price of Emerald Shares on 30 September 2013 of 1.2 cents, being the last traded price of Emerald Shares before the Announcement Date;
- (b) a 34.11% premium to the one month volume weighted average price of Emerald Shares up to and including the Announcement Date of 1.0439 cents; and
- (c) a 47.91% premium to the three month volume weighted average price of Emerald Shares up to and including the Announcement Date of 0.9465 cents.

The closing price of Emerald Shares on the date immediately preceding the date of this Bidder's Statement was 1.2 cents. The closing price of Emerald Shares on 28 October 2013 (being the last trading day before the date on which this Bidder's Statement was printed) was 1.2 cents.

### 1.2 Confederate's Offer allows you to realise definite cash value for 30% of your Emerald Shares

If you accept Confederate's Offer and it becomes unconditional, you will receive a definite cash value of 1.4 cents per Emerald Share for 30% of the Emerald Shares that you hold. Being cash, the Offer price is not complicated by the need to value other securities. Further, you will not pay any stamp duty if you accept Confederate's Offer. If your Emerald Shares are registered in an Issuer Sponsored Holding, you will also not incur any brokerage by accepting the Offer (you may incur brokerage or other charges if you choose to sell your Emerald Shares on-market or if you instruct your broker to accept the Offer on your behalf).

### 1.3 Confederate's Offer gives you the opportunity to receive value now for part of your shareholding and benefit from any future potential upside of Emerald in respect of your remaining shareholding

Confederate's proportional offer will:

- (a) ensure Emerald remains listed on the ASX; and
- (b) enable Emerald Shareholders to capture any future potential growth in the value of Emerald, which may not be available to Emerald Shareholders through an offer for 100% of Emerald at this time.

If you accept the Offer and the Offer becomes unconditional, you will receive 1.4 cents cash per Emerald Share for 30% of the Emerald Shares that you hold. The remaining 70% of your shareholding would be held alongside Confederate, and all Emerald Shareholders will (in proportion to their shareholdings) retain

exposure to Emerald and its assets and benefit in any future potential upside of Emerald.

#### **1.4 Emerald's share price may fall if Confederate's Offer does not succeed**

There are many factors that may influence the price of Emerald Shares on ASX and if Confederate's Offer does not succeed there is a risk that the price of Emerald Shares may fall following the close of the Offer. Confederate is providing Emerald Shareholders with a liquidity event to crystallise a material part of their shareholding in a manner where there is price certainty. No such price certainty can be assumed following the close of the Offer, nor can a liquid market for future sales be assumed.

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## **2. SUMMARY OF THE OFFER**

### **2.1 What Confederate is offering to buy**

Confederate is offering to buy 30% of your Shares on the terms set out in this Bidder's Statement. In this regard, you may only accept the Offer for the full 30% of your entire shareholding in Emerald. If you accept the Offer, you will retain 70% of your Emerald Shares. In the event that you sell Shares on-market, the purchaser of those Shares will not be entitled to accept the Offer in respect of those Shares.

Confederate will not buy Shares that are issued during the Offer Period due to the exercise of Emerald Options.

### **2.2 What you will receive if you accept the Offer**

If you accept the Offer you will, subject to the satisfaction of the conditions to the Offer, receive 1.4 cents cash for each of the Shares comprised in the 30% of your Shares accepted under the Offer.

### **2.3 When you will be paid**

If you accept the Offer, you will generally be paid on or before the earlier of:

- (a) one month after the date this Offer is accepted by you or, if the Offer is subject to a defeating condition when accepted, within one month after the Offer becomes unconditional; or
- (b) 21 days after the end of the Offer Period provided that the Offer has become unconditional.

Full details of when payments will be made are set out in section 5 of the Annexure to this Bidder's Statement.

### **2.4 Close of the Offer**

The Offer closes at 5pm (WST) on 30 November 2013, unless it is extended under the Corporations Act. If Confederate wishes to extend the Offer, you will be sent written notice of any extension, as required by the Corporations Act.

### **2.5 There are some conditions to the Offer**

The Offer is subject to some conditions, including:

- (a) a majority of the Emerald Board being made up of Confederate nominees;
- (b) Emerald not proceeding with an alternative proposal from a third party;
- (c) no material adverse change affecting Emerald; and
- (d) no change to the capital structure of Emerald and its subsidiaries.



Full terms of the conditions are set out in section 6 of the Annexure to this Bidder's Statement. Confederate may choose to waive any of these conditions, in accordance with the Offer.

## **2.6 Emerald Options**

Emerald Option holders whose Options are exercised into Shares during the Offer Period will not be able to accept the Offer in respect of the Shares which they are issued. Confederate is not making a separate offer to holders of Emerald Options.

## **2.7 How you accept the Offer**

You may only accept the Offer for 30% of your Emerald Shares.

### **(a) Issuer sponsored shareholders**

If your Emerald Shares are held on Emerald's issuer sponsored subregister (such holdings will be evidenced by an 'I' appearing next to your holder number on the enclosed Acceptance Form), to accept this Offer, you must complete and sign the Acceptance Form enclosed with this Bidder's Statement and return it in accordance with the instructions contained in the form before the Offer closes.

### **(b) CHESS sponsored shareholders**

If your Emerald Shares are in a CHESS Holding (such holdings will be evidenced by an 'X' appearing next to your holder number on the enclosed Acceptance Form), you may accept the Offer by either:

- (i) completing and signing the Acceptance Form enclosed with this booklet and returning it in accordance with the instructions contained in the form; or
- (ii) calling your broker and instructing your broker to accept the Offer on your behalf,

before the Offer closes.

### **(c) Participants**

If you are a Participant, acceptance of this Offer must be initiated in accordance with rule 14.14 of the ASX Settlement Operating Rules before the Offer closes.

Full details on how to accept the Offer are set out in section 4 of the Annexure to this Bidder's Statement.

## **2.8 Where to go for further information**

For queries in relation to the Offer, see the enclosed Acceptance Form or contact your stockbroker, accountant or financial adviser.

## **2.9 Important notice**

The information in this section 2 is a summary only of Confederate's Offer and is qualified by the detailed information set out elsewhere in this Bidder's Statement.

You should read the entire Bidder's Statement and the Target's Statement that Emerald will shortly be sending to you, before deciding whether to accept the Offer.

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### 3. INFORMATION ON CONFEDERATE

#### 3.1 Introduction

Confederate is a privately held company incorporated on 27 September 2013 as a special purpose vehicle for making the Offer. Confederate's registered office is located in Perth, Australia.

The current shareholders of Confederate are:

- (a) P&L – 1 Confederate Share; and
- (b) Desertfox – 1 Confederate Share.

Confederate is not currently a registered holder of Emerald Shares. However, P&L and Desertfox are each currently registered holders of 94,300,000 Emerald Shares (being a 9.99% interest in the Emerald Shares on issue at the date of this Bidder's Statement). As a result, Confederate and its Associates currently hold a total of 188,600,000 Emerald Shares (being a 19.99% interest in the Emerald Shares on issue at the date of this Bidder's Statement).

Confederate's current directors are Peter Pynes and Timothy Kestell. Further information in respect of the Confederate Board is set out in section 3.2(b) of this Bidder's Statement.

#### 3.2 Overview of Confederate and its Principal Activities

##### (a) History and Operations

Due to Confederate being recently incorporated, it does not have any significant track record of investments or returns to investors. Confederate does not have any subsidiaries, interests in any other companies or assets or carry on any activities other than as described in section 3 of this Bidder's Statement.

Confederate:

- (i) has not lodged any financial statements with the ASIC; and
- (ii) is not listed on any recognised stock exchange and therefore is not subject to the periodic and continuous disclosure requirements of the Listing Rules.

##### (b) Directors of Confederate

Brief profiles of the directors of Confederate as at the date of this Bidder's Statement are as follows:

###### **Mr Peter Pynes**

*Non-Executive Director*

Mr Pynes has in excess of 20 years experience in Australia and overseas capital markets. He previously worked at Deutsche Bank as a director, global markets where he gained extensive knowledge of global

structured debt products as well as capital raising and syndication. In this role Mr Pynes established relationships with leading Australian investment institutions, which included his involvement in \$350m of ASX listed structured debt transactions and in excess of \$3.8 billion of ASX listed hybrid and convertible investments. In the past decade, Mr Pynes has played a key role in forming and capitalising both public listed and unlisted companies. Mr Pynes has been involved in both initial public offerings and takeovers, including the listing on the ASX of Tusker Gold Limited and its successful cash takeover by Barrick Gold Limited. Mr Pynes is a director of MPC Funding Limited, a specialist financing company providing in excess of \$450m of loan funds for the development of the Melbourne Convention Centre. Mr Pynes is a Fellow of the Australian Institute of Company Directors (FAICD) and a Senior Associate of Financial Services Institute of Australia (SA FIN).

*Directorships:* Nexus Bonds Limited

Blue Capital Limited

*Past Directorships:* Centralian Minerals Limited (from October 2006 - June 2007)

Indago Resources Limited (2010 – 2012)

Tusker Gold Limited (2010 – 2011)

### **Mr Tim Kestell**

*Non-Executive Director*

Mr Kestell has over 15 years experience in equity markets, including working for Australian stockbrokers Euroz Securities and Patersons.

In the past decade, Mr Kestell has played a key role in forming and/or recapitalising publicly listed companies, and raising more than \$70,000,000 in the process as well as being involved in numerous takeovers, including Barrick Gold Limited's offer for Tusker Gold Limited.

Mr Kestell holds a Bachelor of Commerce degree and is currently a non executive director of ASX listed company Emmerson Resources Limited.

*Directorships:* Emmerson Resources Limited

Blue Capital Limited

*Past Directorships:* Northern Energy Limited (from 2004-2005)

Biosignal Limited (formerly CTI Communications Limited) (from 2003-2004)

Centralian Minerals Limited (from October 2006 - June 2007)

Indago Resources Limited (2010 – 2012)

Tusker Gold Limited (2010 – 2011)

(c) **Financial information on Confederate**

While Confederate does not have any significant track record of investments or returns to investors, it has entered into the Loan Agreement with its current shareholders and their associated entities for the purpose of funding the Offer. Further details in respect of the Loan Agreement are set out in section 6.2 of this Bidder's Statement.

**3.3 Publicly available information about Confederate**

Confederate is required to lodge various documents with ASIC. Copies of documents lodged with ASIC by Confederate may be obtained from, or inspected at, an ASIC office.

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## 4. INFORMATION ON EMERALD

### 4.1 Overview of Emerald and its Principal Activities

#### (a) History and Operations

Emerald is a petroleum exploration and production company, listed on the ASX with a market capitalisation of approximately \$11,323,815.65 (as at 10 October 2013). Emerald's head office is situated in Perth, Australia.

Emerald's major asset is a substantial equity interest in Emerald Oil Inc (NYSE:EOX), an active Williston Basin operating company listed on the New York Stock Exchange. In addition, Emerald holds exploration and production interests in the Appalachian Gas Project located in Maqoffin County, Kentucky and Canning Basin Project located in Western Australia.

#### (i) Emerald Oil Inc

On 26 July, 2012, Emerald completed a transaction whereby Voyager Oil and Gas Inc. (AMEX:VOG) (**Voyager**), a publicly listed company in the United States, acquired Emerald Oil Inc. (Emerald's wholly owned subsidiary) for 11,635,217 shares in Voyager. Voyager subsequently changed its trading name to Emerald Oil Inc (**EOX**), retaining its listing on the New York Stock Exchange (NYSE:EOX) and implemented a 7 for 1 reverse split of its shares, consolidating Emerald's holding in EOX shares to 1,662,174 shares.

In May 2013, a meeting of Emerald Shareholders was held to consider distributing EOX shares in specie to Emerald Shareholders. Emerald Shareholders voted overwhelmingly to reject this proposal.

As set out in section 4.1(d), on 8 October 2013, OGH sought to requisition a meeting for an in specie distribution of Emerald's interest in EOX.

#### (ii) Canning Basin Project

As announced to ASX on 29 July 2013, Emerald has entered into an agreement (conditional upon standard approvals by the Department of Mines and Petroleum) with Key Petroleum Limited to sell all of Emerald's interest in the Canning Basin Project for a mixture of cash and Emerald Shares.

#### (iii) Appalachian Gas Project

Emerald's Appalachian gas operations are operated through Kentucky Energy Partners, a company 75% owned by Emerald. KEP currently holds 2,500 lease acres with 29 existing wells potentially capable of gas production, as well as an 8 mile long

gas gathering pipeline and gas conditioning/compression facilities.

According to Emerald's most recent annual report lodged with ASX on 30 September 2013, Emerald has 943,651,304 shares on issue, comprising approximately 1,540 shareholders including Confederate which currently holds approximately 19.99% of the Emerald Shares on issue. Refer to section 5.2, for further information on the substantial shareholders of Emerald.

(b) **Directors**

As announced on 3 October 2013, three of the directors of Emerald being Messrs McAndrew Rudisill, Dino Di Costa and Davide Bosio recently resigned from their positions on the Emerald Board. Additionally, Mr Mike Krzus resigned as a director of Emerald on 11 October 2013.

As a result, Emerald appointed Mr Ross Williams as a director of Emerald on 4 October 2013 to fill the vacancy left by the resigning directors and appointed Mr Tim Kestell and Peter Pynes to the Emerald Board on 11 October 2013. Accordingly, as at the date of this Bidder's Statement, there are 4 directors of Emerald, being:

- (i) Mr Jeremy Shervington (Non-Executive Chairman);
- (ii) Mr Tim Kestell (Non-Executive Director);
- (iii) Mr Peter Pynes (Non-Executive Director); and
- (iv) Mr Ross Williams (Non-Executive Director).

As set out in section 7.2 of this Bidder's Statement, P&L and Desertfox have requisitioned a general meeting of Emerald Shareholders to seek the removal of Messrs McAndrew Rudisill, Dino Di Costa, Davide Bosio and Mike Krzus and the appointment of Peter Pynes and Tim Kestell to the Emerald Board. As the Emerald Board has been reconstituted prior to that meeting being convened, P&L and Desertfox will withdraw the requisition accordingly.

Tim Kestell and Peter Pynes will take steps to ensure that a committee of the Emerald Board (**Independent Board Committee**) is formed to consider and assess the Offer which will be comprised of all Emerald directors other than Tim Kestell and Peter Pynes. Tim Kestell and Peter Pynes will not be permitted to participate in or vote on any consideration of the Offer by the Emerald Board.

(c) **Financial overview**

Based on Emerald's latest annual report, as at 30 June 2013, Emerald had:

- (i) total assets of \$14,030,401;
- (ii) total liabilities of \$64,024; and

(iii) total equity of \$13,966,377.

For further details in respect of Emerald's financial status, please refer to Emerald's annual financial report for the year ended 30 June 2013 which is available on the ASX website, [www.asx.com.au](http://www.asx.com.au) (ASX:EMR), Emerald's website, <http://www.emeraldoilandgas.com/> or by contacting Emerald directly.

(d) **Ochre Scheme of Arrangement and In Specie Distribution Proposal**

As announced on 2 August 2013, Emerald has entered into an Implementation Deed with one of its substantial shareholders, Ochre Group Holdings Limited (**OGH**). The Implementation Deed sets out the steps in implementing a scheme of arrangement under which Emerald Shareholders would receive 1 fully paid ordinary share in OGH in exchange for each 2.75 Emerald Shares held (**OGH Scheme**).

However, on 8 October 2013, Emerald and OGH mutually agreed to terminate the OGH Scheme, with no break fee payable by either party. Subsequently on 8 October 2013, OGH sought to requisition a meeting of Emerald Shareholders seeking a resolution for a reduction in capital and an in specie distribution of Emerald's interest in EOX (**In Specie Distribution**).

## 4.2 Disclaimer

The information on Emerald has been prepared by Confederate using publicly available information. The information has not been independently verified and Confederate does not make any representation or warranty, express or implied, as to the accuracy or completeness of that information.

The information on Emerald in this Bidder's Statement should not be considered comprehensive.

Further information relating to Emerald's business may be included in Emerald's Target's Statement which Emerald must provide to Emerald Shareholders in response to this Bidder's Statement.

## 4.3 Publicly available information about Emerald

Emerald is a listed disclosing entity for the purposes of the Corporations Act and as such is subject to regular reporting and disclosure obligations. Specifically, as a listed company, Emerald is subject to the listing rules of ASX which require continuous disclosure of any information Emerald has concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

ASX maintains files containing publicly disclosed information about all listed companies. Emerald's file is available for inspection at ASX during normal business hours.

In addition, Emerald is required to lodge various documents with ASIC. Copies of documents lodged with ASIC by Emerald may be obtained from, or inspected at, an ASIC office.



A substantial amount of information about Emerald is available in electronic form at <http://www.emeraldoilandgas.com/>.

## 5. INFORMATION ON EMERALD'S SECURITIES

### 5.1 Emerald's Issued Securities

According to documents provided by Emerald to ASX, as at the date of this Bidder's Statement, Emerald's issued securities consisted of:

- (a) 943,651,304 Shares; and
- (b) 167,600,000 Options.

The Options are unlisted and the terms are as follows:

| Number of Options | Exercise price | Expiry Date   |
|-------------------|----------------|---------------|
| 117,600,000       | \$0.05         | 30 April 2014 |
| 50,000,000        | \$0.05         | 28 June 2014  |

The Offer does not extend to Shares issued on any exercise of Options.

### 5.2 Substantial shareholders in Emerald

As at the date of this Bidder's Statement, according to documents provided by Emerald to ASX, the following entities are substantial shareholders in Emerald:

| Substantial shareholder        | Number of Shares held | Voting Power (%) |
|--------------------------------|-----------------------|------------------|
| Confederate                    | 188,600,000           | 19.99%           |
| Ochre Petroleum Pty Ltd        | 155,650,000           | 16.49%           |
| HSBC Custody Nominees Aust Ltd | 55,500,873            | 5.88%            |

A list of the top 20 shareholders of Emerald, as at 27 September 2013 is set out in its annual financial report for the year ended 30 June 2013 which is available on the ASX website, [www.asx.com.au](http://www.asx.com.au) (ASX:EMR), Emerald's website, <http://www.emeraldoilandgas.com/> or by contacting Emerald directly.

If Confederate acquires 30% of the Shares on issue as at the Register Date that it and its Associates do not currently hold or control (the total of such Shares being 226,515,391) Confederate and its Associates would then hold approximately 43.99% of the Shares (based on the number of Shares on issue as at the date of this Bidder's Statement).

### 5.3 Interests in Emerald Securities

As at the date of this Bidder's Statement, Confederate and its Associates:

- (a) had a voting power in Emerald of 19.99%;
- (b) had a relevant interest in 188,600,000 Shares; and

- (c) did not have a relevant interest in any Options or other securities of Emerald.

As at the date of the Offer, Confederate and its Associates:

- (a) had a voting power in Emerald of 19.99%;
- (b) had a relevant interest in 188,600,000 Shares; and
- (c) did not have a relevant interest in any Options or other securities of Emerald.

#### 5.4 Dealings in Shares

Confederate's Associates, P&L and Desertfox made the following on-market purchases of Emerald Shares:

| Date             | Emerald Shares    | Total Consideration   | Consideration per Share | %            |
|------------------|-------------------|-----------------------|-------------------------|--------------|
| <b>P&amp;L</b>   |                   |                       |                         |              |
| 18/09/2013       | 66,372,627        | \$696,912.58          | 1.05 cents              | 7.03%        |
| 1/10/2013        | 7,140,689         | \$99,255.58           | 1.39 cents              | 0.76%        |
| 2/10/2013        | 6,444,949         | \$90,229.29           | 1.40 cents              | 0.68%        |
| 3/10/2013        | 13,541,735        | \$189,584.29          | 1.40 cents              | 1.44%        |
| 8/10/2013        | 800,000           | \$10,400.00           | 1.30 cents              | 0.08%        |
| <b>TOTAL</b>     | <b>94,300,000</b> | <b>\$1,086,381.74</b> | -                       | <b>9.99%</b> |
| <b>Desertfox</b> |                   |                       |                         |              |
| 18/09/2013       | 66,372,627        | \$696,912.58          | 1.05 cents              | 7.03%        |
| 1/10/2013        | 7,140,690         | \$99,255.58           | 1.39 cents              | 0.76%        |
| 2/10/2013        | 6,444,949         | \$90,229.30           | 1.40 cents              | 0.68%        |
| 3/10/2013        | 13,541,734        | \$189,584.28          | 1.40 cents              | 1.44%        |
| 8/10/2013        | 800,000           | \$10,400.00           | 1.30 cents              | 0.08%        |
| <b>TOTAL</b>     | <b>94,300,000</b> | <b>\$1,086,381.74</b> | -                       | <b>9.99%</b> |

Other than as set out above, neither Confederate nor any Associate of Confederate has provided, or agreed to provide, consideration for Shares under any purchase or agreement during the 4 months before the date of this Bidder's statement, or in the period between the date of this Bidder's Statement and date of the Offer.

#### 5.5 Effect of the Offer on Options

The Offer does not extend to Emerald Shares that are issued on the exercise of Emerald Options during the period from the Register Date to the end of the Offer Period.

Confederate is not making a separate offer to holders of Emerald Options.

## 5.6 No Pre Offer Benefits

Except as set out in this Bidder's Statement, during the period of 4 months before the date of this Bidder's Statement, or in the period between the date of this Bidder's Statement and the date of the Offer, neither Confederate nor any Associate of Confederate gave, or offered to give, or agreed to give a benefit to another person which was likely to induce the other person, or an Associate of the other person, to:

- (a) accept the Offer; or
- (b) dispose of Emerald Shares,

and which is not offered to all holders of Emerald Shares under the Offer.

## 5.7 No Escalation Agreements

Neither Confederate nor any Associate of Confederate has entered into any escalation agreement that is prohibited by section 622 of the Corporations Act.

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## 6. SOURCES OF CONSIDERATION

### 6.1 Total Cash Consideration

The consideration for the acquisition of the Shares to which the Offer relates will be satisfied wholly in cash.

The maximum amount of cash that Confederate would be required to pay under the Offer if acceptances are received in respect of Emerald Shares on issue as at the date of this Bidder's Statement (other than those Emerald Shares in which Confederate has a relevant interest) would be approximately \$3,171,215.48.

### 6.2 Sources of Cash Consideration

Confederate does not currently have existing cash reserves available to pay the consideration under the Offer. Confederate will fund the cash payable under the Offer using cash provided to it by the following entities:

- (a) Desertfox – an entity controlled by Tim Kestell;
- (b) OBG – an entity controlled by Tim Kestell;
- (c) P&L – an entity controlled by Peter Pynes and his wife, Lara Pynes; and
- (d) Quicksilver – an entity controlled by Lara Pynes,

(together, the **Lenders**) pursuant to a loan agreement dated 2 October 2013 (**Loan Agreement**).

Pursuant to the Loan Agreement, the Lenders have irrevocably and unconditionally agreed to advance to Confederate, such amounts as are required to satisfy Confederate's obligations under the Offers, together with amounts required to cover all transaction costs associated with the Offers, on the following terms:

- (a) the funding arrangement is non-interest bearing;
- (b) the funds may be used for the sole purpose of making payment of the consideration payable under the Offer;
- (c) the funds are available at any time and the right of Confederate to request an advance is not subject to any conditions precedent; and
- (d) the funding remains available at any time during which consideration is payable under the Offer.

Under the terms of the Loan Agreement, the proportion of funding the Offer between the Lenders has been agreed to be as follows:

- (a) Desertfox and OBG together will lend up to 50% of the required funds in such proportions between them as Desertfox determines; and
- (b) P&L and Quicksilver together will lend up to 50% of the required funds in such proportions between them as P&L determines.

Events of default under the Loan Agreement include Confederate failing to use funds advanced for the purpose of making payment of consideration under the Offer, Confederate becoming insolvent or Confederate failing to repay any amounts owing to the Lenders when they are due and payable.

Having regard to the matters set out in this section 6, Confederate is of the opinion that it has a reasonable basis for forming the view, and it holds the view, that it will be able to pay the consideration required for the acquisition of the Emerald Shares pursuant to the Offer to satisfy its obligations under the Offer. The Offer is not subject to any financing conditions.

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## **7. CONFEDERATE'S INTENTIONS IN RELATION TO EMERALD**

### **7.1 Introduction**

The articulation and formulation of Confederate's intentions are necessarily limited by virtue of the fact that it has only had access to publicly available information about Emerald and its affairs.

The intentions of Confederate are set out in this section of the Bidder's Statement. Those intentions have been formed on the basis of facts and information concerning Emerald, and the general business environment, which are known at the time of preparing this Bidder's Statement. Final decisions will only be reached by Confederate in light of material information and circumstances at the relevant time. Accordingly, the statements set out in this section are statements of current intention only and accordingly may vary as new information becomes available or circumstances change.

### **7.2 Reconstitution of Emerald Board**

As announced by Emerald on 27 September 2013, P&L and Desertfox served a general meeting requisition on Emerald pursuant to section 249D of the Corporations Act seeking:

- (a) the removal of Messrs McAndrew Rudisill, Davide Bosio, Dino Di Costa and Mike Krzus from the Emerald Board; and
- (b) the appointment of Messrs Peter Pynes and Tim Kestell to the Emerald Board,

**(Requisitioned Meeting).**

As announced on 3 October 2013, Messrs Rudisill, Bosio and Di Costa resigned from the Emerald Board. Further, on 11 October 2013, Mr Mike Krzus resigned and Messrs Tim Kestell and Peter Pynes were appointed to the Emerald Board. As the resolutions to be considered at the Requisitioned Meeting have now been effected without holding a meeting, P&L and Desertfox will withdraw the requisition accordingly.

### **7.3 Intentions for Emerald as a part owned controlled entity**

If, pursuant to the Offer, Confederate acquires 30% of the Shares on issue as at the Register Date that it and its Associates do not currently hold or control (the total of such Shares being 226,515,391), Confederate and its Associates would then hold approximately 43.99% of the Shares (based on the number of Shares on issue as at the date of this Bidder's Statement).

This section 7.3 describes Confederate's intentions if by virtue of acceptances of the Offer, Confederate gains effective control of Emerald, but where Confederate is not entitled to proceed to compulsory acquisition in accordance with Part 6A.1 of the Corporations Act.

In these circumstances, Confederate's current intentions are as follows:

**(a) Corporate matters**

After the end of the Offer Period, Confederate intends:

- (i) (subject to the Corporations Act and the constitution of Emerald) consider appointing additional nominees to the Emerald Board, depending on the extent of success of the Offer (and if considered necessary, in order to satisfy the defeating condition set out in section 6.1(a) of the Annexure to this Bidder's Statement); and
- (ii) (subject to continued compliance by Emerald with the Listing Rules) to maintain Emerald's listing on the ASX.

**(b) Operational matters and assets**

After the end of the Offer Period, Confederate intends to:

- (i) investigate the value potential of Emerald's interest in EOX shares and potentially put forward future resolutions to Emerald Shareholders to vote upon a disposal of them, however Confederate does not support an in specie distribution of EOX shares to Emerald Shareholders and its current intention is to vote against the In Specie Distribution;

- (ii) proceed with the disposal of the Canning Basin Project; and
- (iii) review but otherwise continue current exploration programs and budgets for the Appalachian Gas Project.

(c) **General operational review**

After the end of the Offer Period, Confederate intends to conduct a broad based review of Emerald's operations on a strategic, operational and financial level to:

- (i) evaluate Emerald's performance and corporate direction; and
- (ii) review existing financing facilities and consolidate financing arrangements.

(d) **Head office and employees**

It is Confederate's intention that Emerald's head office remain in Perth. However, a review will be conducted to look at potential cost savings that may be achieved by reducing staff numbers and/or consolidating back office work.

Confederate may, through its appointees to the Emerald Board, propose that the consideration of possible head office cost reductions be included in a general operational review.

#### **7.4 Limitations in giving effect to intentions**

The ability of Confederate to implement the intentions set out in this section 7 will be subject to the legal obligations of Emerald directors to act in good faith and for proper purposes and to have regard to the interests of Emerald and Emerald Shareholders, and the requirements of the Corporations Act and the ASX Listing Rules relating to transactions between related parties, conflicts of interest and material personal interests. Confederate will only make a decision on the above mentioned courses of action following legal and financial advice in relation to those requirements.

#### **7.5 Intentions for Emerald if not controlled by Confederate**

This section 7.5 describes Confederate's intentions if Emerald does not gain effective control of Emerald by virtue of acceptances of the Offer.

In that circumstance:

- (a) Confederate may not be in a position to give effect to the intentions set out in section 7.3 of this Bidder's Statement, but will endeavour to do so, to the extent practicable; and
- (b) Confederate's current intention is to hold any stake in Emerald with a view to maximising returns for Emerald, Confederate and their respective shareholders (this may result in Confederate acquiring additional Emerald Shares, to the extent permitted by law).

## **7.6 Other intentions**

Subject to the matters described above in this section 7 and elsewhere in this Bidder's Statement and, in particular, the completion of the strategic review of Emerald's operations, it is the intention of Confederate, on the basis of the facts and information concerning Emerald that are known to it and the existing circumstances affecting the assets and operations of Emerald at the date of this Bidder's Statement, that:

- (a) the business of Emerald will be conducted in the same manner as at the date of this Bidder's Statement;
- (b) there will be no redeployment of the fixed assets of Emerald; and
- (c) the present employees of Emerald will continue to be employed by Emerald.

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## **8. TAX CONSIDERATIONS**

### **8.1 Introduction**

The following is a general description of the Australian income and capital gains tax consequences to Emerald Shareholders on the acceptance of the Offer. The comments set out below are relevant only to those Emerald Shareholders who hold their Shares as capital assets for the purpose of investment.

Emerald Shareholders who are not resident in Australia for tax purposes should take into account the tax consequences under the laws of their country of residence, as well as under Australian law, of acceptance of the Offer. The following summary is intended only for Australian resident Emerald Shareholders.

The following description is based upon the Australian law and administrative practice in effect at the date of this Bidder's Statement, but it is general in nature and is not intended to be an authoritative or complete statement of the laws applicable to the particular circumstances of every Emerald Shareholder. Emerald Shareholders should seek independent professional advice in relation to their own particular circumstances.

### **8.2 Australian resident shareholders**

Acceptance of the Offer will involve the disposal by Emerald Shareholders of their Shares by way of transfer to Confederate. This change in the ownership of the Shares will constitute a capital gains tax event for Australian capital gains tax purposes.

Emerald Shareholders who are Australian residents may make a capital gain or capital loss on the transfer of Shares acquired on or after 20 September 1985, depending on whether their capital proceeds from the disposal of the Shares are more than the cost base (or in some cases indexed cost base) of those Shares, or whether the capital proceeds are less than their reduced cost base of those Shares.

The capital proceeds of the capital gains tax event will be the consideration price received by the Emerald Shareholder in respect of the disposal of the

Shares. The cost base of the Shares generally includes their cost of acquisition and any incidental costs of acquisition and disposal that are not deductible to the shareholder.

If the Shares were acquired at or before 11.45am on 21 September 1999 and held for at least 12 months before their disposal, an Emerald Shareholder may adjust the cost base of the Shares to include indexation by reference to changes in the consumer price index from the calendar quarter in which the Shares were acquired until the quarter ended 30 September 1999. These indexation adjustments are taken into account only for the purposes of calculating a capital gain; they are ignored when calculating the amount of any capital loss.

Individuals, complying superannuation entities or trustees that have held Shares for at least 12 months but do not index the cost base of the Shares should be entitled to discount the amount of the capital gain (after application of capital losses) from the disposal of Shares by 50% in the case of individuals and trusts or by 33% for complying superannuation entities.

Capital gains and capital losses of a taxpayer in a year of income are aggregated to determine whether there is a net capital gain. Any net capital gain is included in assessable income and is subject to income tax. Capital losses may not be deducted against other income for income tax purposes, but may be carried forward to offset against future capital gains.

### **8.3 Non resident shareholders**

Emerald Shareholders who are not resident in Australia for income tax purposes are generally not subject to Australian capital gains tax on the disposal of Shares if they and their Associates have not held 10% or more of the issued Shares throughout a twelve month period in the two years preceding the disposal of their Shares. This is on the assumption that Emerald will be deemed to have over 50% of its underlying value represented by Australian real property (land and rights relating to land) – which would generally be the case for Australian mining companies.

### **8.4 Goods and Services Tax**

Holders of Emerald Shares should not be liable to GST in respect of a disposal of those Shares.

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## **9. OTHER MATERIAL INFORMATION**

### **9.1 Potential for waiver of defeating conditions**

Confederate's Offer is subject to a number of defeating conditions set out in section 6.1 of the Annexure to this Bidder's Statement. Under the terms of the Offer and the Corporations Act, any or all of those defeating conditions may be waived by Confederate.

If an event occurs which results (or would result) in the non-fulfilment of a defeating condition, Confederate may not make a decision as to whether it will either rely on the occurrence, or instead waive the defeating condition in respect of that occurrence, until the date for giving notice as to the status of the



conditions of the Offer under section 630(3) of the Corporations Act. If Confederate decides that it will waive a defeating condition, it will announce that decision to ASX in accordance with section 650F of the Corporations Act.

If any defeating condition is not fulfilled and Confederate decides to rely on that non-fulfilment, then any contract resulting from acceptance of an Offer will become void at (or, in some cases, shortly after) the end of the Offer Period, and the relevant Emerald Shares will be returned to the holder.

## **9.2 In Specie Distribution**

It is a condition of the Offer that Emerald does not make or declare, or announce an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) between the Announcement Date and the end of the Offer Period (refer to sections 6.1(f) and (g) of the Annexure to this Bidder's Statement).

Confederate does not consider that this condition is triggered as a result of the meeting requisition by OGH for the In Specie Distribution, or announcement thereof. However, in the event that Shareholders approve, and Emerald announces that it intends to proceed with, the In Specie Distribution, this defeating condition will be triggered. Confederate does not support the In Specie Distribution and currently intends to vote against any resolution in relation to it.

Completion of the In Specie Distribution may also trigger the conditions contained in sections 6.1(d)(ii) and 6.1(p) of the Annexure to this Bidder's Statement on the basis that persons other than Confederate will acquire a substantial part of Emerald's assets (which is likely to have a value in excess of \$50,000). However, until the In Specie Distribution is effected (if at all), this condition will not be triggered.

Confederate reserves its rights to rely on the above conditions being triggered in the event that the In Specie Distribution is approved by Shareholders and Emerald announces that it intends to proceed with the In Specie Distribution, resulting in acceptances under the Offer becoming void.

## **9.3 Date for determining holders of shares**

For the purposes of section 633 of the Corporations Act, the date for determining the people to whom information is to be sent under items 6 and 12 of subsection 633(1) is the Register Date.

## **9.4 Consents**

This Bidder's Statement includes statements which are made in, or based on statements made in, documents lodged with ASIC or given to ASX. Under the terms of ASIC Class Order 13/521, the parties making those statements are not required to consent to, and have not consented to, inclusion of those statements in this Bidder's Statement. The relevant statements were taken from Emerald's annual financial report for the year ended 30 June 2013, Emerald's June quarterly activities and cash flow report for the period ending 30 June 2013, Emerald's notice of meeting for the meeting of shareholders held on 24 May 2013, Emerald's announcement of results of meeting held on 24 May 2013,

other notices which Emerald has lodged with ASX and Emerald's website – <http://emeraldoilandgas.com/>. If you would like to receive a copy of any of those documents, or the relevant parts of the documents containing the statements (free of charge), during the Offer Period, please call Security Transfer Registrars Pty Ltd on +61 8 9315 2333.

In addition, as permitted by ASIC Class Order 13/523, this Bidder's Statement may include or be accompanied by certain statements:

- (a) fairly representing a statement by an official person; or
- (b) from a public official document or a published book, journal or comparable publication.

Steinepreis Paganin and Security Transfer Registrars Pty Ltd have each consented to being named in this Bidder's Statement in the form and context in which their names appear and have not withdrawn their consent prior to lodgement of this Bidder's Statement with ASIC. Each person named above as having given their consent to being named in this Bidder's Statement:

- (a) does not make, or purport to make, any statement in the Bidder's Statement or any statement on which a statement in this Bidder's Statement is based; and
- (b) to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Bidder's Statement, other than a reference to their name.

## **9.5 ASIC modifications and exemptions**

Confederate has not obtained from ASIC any modifications or exemptions from the Corporations Act in relation to Confederate's Offer.

Confederate may rely upon various "class order" instruments published by ASIC which provides for modifications and exemptions that apply generally to all persons, including Confederate.

## **9.6 Social security and superannuation implications of Offer**

Acceptance of the Offer may have implications under your superannuation arrangements or on your social security entitlements. If in any doubt, you should seek specialist advice.

## **9.7 Other material information**

Except as disclosed elsewhere in this Bidder's Statement, there is no other information that is:

- (a) material to the making of a decision by an Emerald Shareholder whether or not to accept the Offer; and
- (b) known to Confederate,

which has not previously been disclosed to Emerald Shareholders.

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## 10. DEFINITIONS AND INTERPRETATIONS

### 10.1 Definitions

In this Bidder's Statement and in the Acceptance Form unless the context otherwise appears, the following terms have the meanings shown below:

**\$ or A\$** means Australian dollars, the lawful currency of the Commonwealth of Australia.

**Acceptance Form** means the acceptance form enclosed with this Bidder's Statement.

**Announcement Date** means the date of the announcement of the Offer by Confederate, being 1 October 2013.

**Approval** means a licence, authority, consent, approval, order, exemption, waiver, ruling or decision.

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

**Associate** has the meaning given to that term in the Corporations Act.

**ASX** means ASX Limited ABN 98 008 624 691.

**ASX Settlement** means ASX Settlement Pty Limited ABN 49 008 504 532.

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement which govern the administration of the Clearing House Electronic Sub register System.

**Bidder's Statement** means this document, being the statement of Confederate under Part 6.5 Division 2 of the Corporations Act relating to the Offer.

**Business Day** means a day on which banks are open for business in Perth, excluding a Saturday, Sunday or public holiday.

**CGT** means capital gains tax.

**CHES Holding** means a number of Shares which are registered on Emerald's share register being a register administered by the ASX Settlement and Transfer Corporation Pty Limited and which records uncertificated holdings of Shares.

**Confederate** means Confederate Capital Pty Ltd (ACN 166 032 891).

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

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

**Controlling Participant** in relation to your Shares, has the same meaning as in the ASX Settlement Operating Rules.

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

**Desertfox** means Desertfox Pty Ltd (ACN 091 447 540).

**Emerald** means Emerald Oil and Gas NL (ACN 009 795 046).

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

**Emerald Group** means Emerald and its subsidiaries.

**Emerald Shareholder** means a holder of Emerald Shares.

**Holder Identification Number** has the same meaning as in the ASX Settlement Operating Rules.

**Issuer Sponsored Holdings** means a holding of Shares on Emerald's issuer sponsored sub-register.

**Lenders** has the meaning given to that term in section 6.2 of this Bidder's Statement.

**Listing Rules** means the Official Listing Rules of ASX, as amended and waived by ASX from time to time.

**Loan Agreement** has the meaning given to that term in section 6.2 of this Bidder's Statement.

**OBG** means Old Blood and Guts Pty Ltd (ACN 122 608 360).

**Offer** and **Confederate's Offer** means the offer by Confederate for Shares under this Bidder's Statement.

**Offers** means the offers made under the Offer.

**Offer Period** means the period during which the Offer will remain open for acceptance in accordance with section 3 of the Annexure to this Bidder's Statement.

**Options** or **Emerald Options** means options to subscribe for Shares.

**P&L** means P & L Capital Investments Pty Ltd (ACN 127 446 904).

**Participant** means an entity admitted to participate in the Clearing House Electronic Sub-register system under Rule 4.3.1, 4.4.1 and 4.5.1 of the ASX Settlement Operating Rules.

**Public Authority** means any government or any governmental, semi-governmental, administrative, statutory or judicial entity, authority or agency, whether in Australia or elsewhere, including the ACCC (but excluding the Takeovers Panel, ASIC and any court in respect of proceedings under section 657G or proceedings commenced by a person specified in section 659B(1) of the Corporations Act in relation to the Offer). It also includes any self-regulatory organisation established under statute or any stock exchange.

**Quicksilver** means Quicksilver Asset Pty Ltd (ACN 106 986 261).

**Register Date** means the date set by Confederate under section 633(2) of the Corporations Act, being 14 October 2013.

**Requisitioned Meeting** has the meaning given to that term in section 7.2 of this Bidder's Statement.

**Rights** means all accreditations, rights or benefits of whatever kind attaching or arising from Shares directly or indirectly at or after the Announcement Date (including, but not limited to, all dividends and all rights to receive them or rights to receive or subscribe for shares, notes, bonds, options or other securities declared, paid or issued by Emerald or any of its subsidiaries).

**Securityholder Reference Number** has the same meaning as in the ASX Settlement Operating Rules.

**Shares** or **Emerald Shares** means fully paid ordinary shares in the capital of Emerald.

**Takeover Transferee Holding** has the same meaning as in the ASX Settlement Operating Rules.

**WST** means Western Standard Time as observed in Perth, Western Australia.

## 10.2 Interpretations

In this Bidder's Statement and in the Acceptance Form, unless the context otherwise appears:

- (a) words and phrases have the same meaning (if any) given to them in the Corporations Act;
- (b) words importing a gender include any gender;
- (c) words importing the singular include the plural and vice versa;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (e) a reference to a section, attachment, annexure and schedule is a reference to a section of and an attachment, annexure and schedule to this Bidder's Statement as relevant;
- (f) a reference to any statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances, or by laws amending, varying, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) headings and bold type are for convenience only and do not affect the interpretation of this Bidder's Statement;
- (h) a reference to time is a reference to time in Perth, Australia;
- (i) a reference to writing includes facsimile transmissions; and

- (j) a reference to dollars, \$, A\$, cents, ¢ and currency is a reference to the lawful currency of the Commonwealth of Australia.

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**11. APPROVAL OF BIDDER'S STATEMENT**

This Bidder's Statement has been approved by a resolution passed by the directors of Confederate.

Dated: 2013

Signed for and on behalf of  
**Confederate Capital Pty Ltd**



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Director  
Peter Pynes

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## ANNEXURE – OFFER TERMS

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### 1. OFFER

#### 1.1 Partial offer

- (a) Confederate offers to acquire 30% of your Shares together with all Rights attaching to them on the following terms and conditions (section 1.5 of this Annexure discusses treatment of fractions).
- (b) Subject to these terms, you may only accept this Offer for 30% of your Shares but not a greater proportion.
- (c) This Offer does not extend to any Options you may hold.
- (d) An Offer in this form and bearing the same date is being made to each person registered as the holder of Shares in the register of Emerald Shareholders as at 5pm (WST) on the Register Date.
- (e) The Offer does not extend to any Shares that are issued between the Register Date and the end of the Offer Period, including Shares issued as a result of the exercise of Options.

#### 1.2 Offer extends to others

This Offer extends to any person able to give good title to any of our Shares during the Offer Period and has not already accepted an Offer for those Shares. If you accept this Offer in respect of 30% of your Shares, you are not entitled to accept the Offer for your remaining Shares (**Remaining Shares**), nor can a transferee of your Remaining Shares. Your Remaining Shares will effectively be 'tagged' so that a transferee of the Remaining Shares will be prevented from accepting this Offer.

#### 1.3 Extension to unmarketable parcels

Despite sections 1.1(b) and 1.2 of this Annexure, if accepting this Offer would leave you with less than a marketable parcel of Shares (i.e. less than \$500 worth of Shares measured by reference to the last price Shares had traded in the cum-offer market on the day your acceptance is processed), this Offer extends to the whole of that parcel and if you accept this Offer for your Shares, you will be deemed to have accepted for and be paid consideration for 100% of your Shares.

#### 1.4 Acceptance of Offer

By accepting this Offer, you undertake to transfer to Confederate not only the Shares to which the Offer relates, but also all Rights attached to the Shares.

#### 1.5 Rounding

If 30% of the number of Shares held by you is not a whole number, then the number of Shares you will be entitled to sell to Confederate under the Offer will be rounded down to the nearest whole number.

## **1.6 Date of Offer**

This Offer is dated 29 October 2013.

## **2. CONSIDERATION**

### **2.1 Consideration offered**

Subject to the terms of this Offer, the consideration offered for each of your Shares to which this Offer relates is 1.4 cents in cash.

## **3. OFFER PERIOD**

The Offer will, unless withdrawn, remain open for acceptance during the period commencing on the date of this Offer and ending at 5pm (WST) on the later of:

- (a) 30 November 2013; or
- (b) any date to which the period of this Offer is extended in accordance with the Corporations Act.

## **4. HOW TO ACCEPT THIS OFFER**

### **4.1 General**

Subject to section 1.3 of this Annexure, you may accept this Offer for 30% of your Shares. You may accept the Offer at any time during the Offer Period.

### **4.2 Acceptance procedure**

The acceptance procedure will depend on whether your Shares are in an Issuer Sponsored Holding or a CHESS Holding. If you are in an Issuer Sponsored Holding, you will have a securityholder reference number (**SRN**) beginning with "I". If you are in a CHESS Holding, you will have a holder identification number (HIN) beginning with "X".

### **4.3 If you hold your Shares in an Issuer Sponsored Holding**

If your Shares are held on Emerald's issuer sponsored subregister, then to accept this Offer in respect of those Shares, you must:

- (a) complete and sign the Acceptance Form which accompanies this Bidder's Statement in accordance with the terms of the Offer and the instructions on the Acceptance Form; and
- (b) return the Acceptance Form together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form in accordance with the instructions contained in the Acceptance Form, so that they are received before the end of the Offer Period.

### **4.4 If you hold your Shares in a CHESS Holding**

If your Shares are held in a CHESS Holding, then to accept this Offer in respect of those Shares:



- (a) you must comply with the ASX Settlement Operating Rules;
- (b) if you are the Controlling Participant, you must initiate acceptance of this Offer in accordance with rule 14.14 of the ASX Settlement Operating Rules before the end of the Offer Period; or
- (c) if you are not the Controlling Participant, you may either:
  - (i) instruct your Controlling Participant (normally your stock broker), in accordance with the sponsorship agreement between you and the Controlling Participant, to initiate acceptance of this Offer in accordance with rule 14.14 of the ASX Settlement Operating Rules, such initiation to occur before the end of the Offer Period. If you choose to accept the Offer in this way, your Controlling Participant will be obliged by rule 14.14.1 of the ASX Settlement Operating Rules to initiate acceptance within the following timeframes:
    - (A) if you specify a time when or by which this Offer must be accepted, in accordance with those instructions; or
    - (B) otherwise, by End of Day (as defined in the ASX Settlement Operating Rules) on the day that you instruct the Controlling Participant to accept this Offer or, if the Offer Period ends on the day you provide those instructions, before the end of the Offer Period; or
  - (ii) complete, sign and return the Acceptance Form in accordance with the terms of the Offer and the instructions on the Acceptance Form, together with all other documents required by the terms of this Offer and the instructions on the Acceptance Form, in accordance with the instructions contained in the Acceptance Form, so that they can be accepted on your behalf before the end of the Offer Period.

#### **4.5 Irrevocable authorisation**

By completing, signing and returning the Acceptance Form in respect of Shares in a CHESS Holding you will be deemed to have irrevocably authorised Confederate (and any nominee or nominees of Confederate) to:

- (a) instruct your Controlling Participant to initiate acceptance of this Offer in respect of all such Shares in accordance with rule 14.14 of the ASX Settlement Operating Rules; and
- (b) give any other instructions concerning those Shares to your Controlling Participant on your behalf under the sponsorship agreement between you and the Controlling Participant.

#### **4.6 Shares held in different holdings**

If at any time during the Offer Period your Shares consist of two or more distinct portions, this Offer is deemed to consist of separate corresponding Offers at the same time as if they were a single Offer for each distinct portion of Shares. An

acceptance by you of one of the Offers which is deemed to exist in respect of a distinct portion is ineffective unless you have given to Confederate a notice which:

- (a) if it relates to Shares in a CHESS Holding, must be in an electronic form approved by the ASX Settlement Operating Rules;
- (b) if it relates to Shares in an Issuer Sponsored Holding or registered on Emerald's register, must be in writing,

stating that the relevant Shares consist of a distinct portion and your acceptance specifies the number of Shares in a distinct portion to which the acceptance relates.

#### **4.7 Nominee holdings**

If your Shares are registered in the name of a broker, investment dealer, bank, trust company or other nominee, you should contact that nominee for assistance in accepting this Offer.

#### **4.8 Shareholder's risk**

The method chosen to deliver the Acceptance Form and other documents is at your risk.

#### **4.9 Acceptance Form**

The Acceptance Form which accompanies this Offer forms part of it. The requirements on the Acceptance Form must be observed in accepting this Offer in respect of your Shares.

#### **4.10 Power of attorney, deceased estate**

When accepting this Offer, you should also forward:

- (a) if the Acceptance Form is executed by an attorney, a certified copy of the power of attorney; and
- (b) if the Acceptance Form is executed by the executor of a will or the administrator of the estate of a deceased Shareholder, a certified copy of the relevant grant of probate or letters of administration.

#### **4.11 Signing under power of attorney**

If the Acceptance Form is signed under power of attorney, the attorney will be taken to have declared that the attorney has no notice of revocation of the power and is empowered to delegate powers under the power of attorney as contemplated by section 4.10 of this Annexure.

#### **4.12 When acceptance is complete**

Acceptance of this Offer will not be complete until the completed Acceptance Form has been received at an address set out in the Acceptance Form and the requirements of this section 4 of this Annexure have been met, provided that:

- (a) Confederate may in its sole discretion waive any or all of those requirements at any time; and
- (b) where such requirements have been complied with in respect of some but not all of your Shares, Confederate may, in its sole discretion, deem your acceptance of this Offer complete in respect of those Shares for which the requirements have been complied with but not in respect of the remainder.

## **5. PAYMENT OF CONSIDERATION**

### **5.1 When consideration is provided**

Subject to section 5.2 of this Annexure and the Corporations Act, if the contract resulting from your acceptance of this Offer becomes unconditional, Confederate will provide the consideration to which you are entitled on acceptance of this Offer on or before the earlier of:

- (a) one month after the date this Offer is accepted or, if the Offer is subject to a defeating condition when accepted, within one month after this Offer or the contract resulting from your acceptance of this Offer becomes unconditional; or
- (b) 21 days after the end of the Offer Period.

Payment of any cash amount to which you are entitled will be made by cheque drawn in Australian currency in your favour. The cheque will be sent to you, at your risk, by ordinary mail (or in the case of Shareholders with addresses outside Australia, by airmail) to your address as shown on the Acceptance Form.

### **5.2 Where additional documents are required**

Where the Acceptance Form requires additional documents to be given with your acceptance (such as a power of attorney):

- (a) if the documents are given with your acceptance, Confederate will provide the consideration in accordance with section 5.1 of this Annexure;
- (b) if Confederate is given the documents after acceptance and before the end of the Offer Period, Confederate will provide the consideration:
  - (i) if at the time that Confederate is given the documents the Offer is subject to a defeating condition, by the earlier of one month after this Offer or the contract resulting from your acceptance of the Offer becomes unconditional or 21 days after the end of the Offer Period; or
  - (ii) if the Offer is unconditional at the time that Confederate is given the documents, by the earlier of one month after Confederate is given the documents or 21 days after the end of the Offer Period; and
- (c) if the documents are given after acceptance and after the end of the Offer Period, Confederate will provide the consideration:

- (i) if at the time that Confederate is given the documents, the contract resulting from your acceptance of the Offer is subject to a defeating condition that relates only to the happening of an event or circumstance referred to in sections 652C (1) or (2) of the Corporations Act, within 21 days after the contract becomes or is declared unconditional; or
- (ii) if at the time that Confederate is given the documents the contract resulting from your acceptance of the Offer is unconditional, within 21 days after Confederate is given the documents.

If you do not provide Confederate with any required additional documents within one month after the end of the Offer Period, Confederate may, in its sole discretion, rescind the contract resulting from your acceptance of the Offer.

### 5.3 Where Confederate is entitled to any Rights

If Confederate becomes entitled to any Rights on acceptance of this Offer, you must give Confederate all documents required to give Confederate title to those Rights. If you do not give those documents to Confederate, or if you have received the benefit of those Rights, Confederate will deduct from the consideration otherwise due to you the amount (or value, as reasonably assessed by Confederate) of those Rights.

### 5.4 Clearances for offshore residents and others

If, at the time of acceptance of this Offer, any authority or clearance of the Reserve Bank of Australia (whether under the *Banking (Foreign Exchange) Regulations 1959* (Cth) or otherwise), or of the Australian Taxation Office, is required for you to receive any consideration under this Offer or you are resident in or a resident of a place to which, or you are a person to whom, any other law of Australia would make it unlawful for Confederate to provide the consideration payable for your Shares, acceptance of this Offer will not create or transfer to you any right (contractual or contingent) to receive the consideration specified in this Offer unless and until all requisite authorities or clearances have been obtained.

## 6. CONDITIONS OF THE OFFER

### 6.1 Offer conditions

The Offer and any contract resulting from acceptance of the Offer are subject to fulfilment of the following conditions:

- (a) **(director appointments)** before the end of the Offer Period, a majority of the directors on the board of Emerald are nominees of Confederate.
- (b) **(no restraining orders)** that between the Announcement Date and the end of the Offer Period:
  - (i) there is not in effect any preliminary or final decision, order or decree issued by a Public Authority; and

- (ii) no application is made to any Public Authority (other than by Confederate), or action or investigation is announced, threatened or commenced by a Public Authority,

in consequence of, or in connection with, the Offer (other than a determination by ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act), which:

- (iii) restrains or prohibits (or if granted could restrain or prohibit), or otherwise materially adversely impacts on, the making of the Offer or the completion of any transaction contemplated by the Offer (whether subject to conditions or not) or the rights of Confederate in respect of Emerald and Emerald Shares to be acquired under the Offer; or
  - (iv) requires the divestiture by Confederate of any Emerald Shares, or the divestiture of any assets of the Emerald Group, Confederate or otherwise.
- (c) **(no material adverse effect)** that no specified event occurs that will, or is reasonably likely to, have a material adverse effect on the assets and liabilities, financial position and performance, profits and losses, revenue or prospects of Emerald and its subsidiaries, including as a result of making the Offers or the acquisition of Emerald Shares pursuant to the Offers. For these purposes, a "specified event" is:
- (i) an event or occurrence that occurs during the Offer Period;
  - (ii) an event or occurrence that occurs before the Announcement Date but is only announced or publicly disclosed between the Announcement Date and the end of the Offer Period; or
  - (iii) an event or occurrence that will or is likely to occur following the Offer Period and which has not been publicly announced prior to the Announcement Date.
- (d) **(no material acquisitions, disposals or new commitments)** except for any proposed transaction publicly announced by Emerald before or on the Announcement Date, none of the following events occurs during the period from the Announcement Date to the end of the Offer Period:
- (i) Emerald or any subsidiary of Emerald acquires, offers to acquire or agrees to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than A\$50,000 or makes an announcement in relation to such an acquisition, offer or agreement;
  - (ii) Emerald or any subsidiary of Emerald disposes of, offers to dispose of or agrees to dispose of one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount, or in respect of which the book value (as recorded in Emerald's statement of financial

position as at 31 December 2012) is, in aggregate, greater than A\$50,000 or makes an announcement in relation to such a disposition, offer or agreement; or

- (iii) Emerald or any subsidiary of Emerald enters into, or offers to enter into or agrees to enter into, any agreement, joint venture, partnership, management agreement or commitment which would require expenditure, or the foregoing of revenue, by Emerald and/or its subsidiaries of an amount which is, in aggregate, more than A\$50,000, or makes an announcement in relation to such an entry, offer or agreement.

- (e) **(no persons exercising rights under certain agreements or instruments)** after the Announcement Date and before the end of the Offer Period, no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument to which Emerald or any subsidiary of Emerald is a party, or by or to which Emerald or any subsidiary of Emerald or any of its assets may be bound or be subject, which results, or could result, to an extent which is material in the context of Emerald or Emerald and its subsidiaries taken as a whole, in:

- (i) any monies borrowed by Emerald or any subsidiary of Emerald being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder;
- (iii) the interest of Emerald or any subsidiary of Emerald in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified; or
- (iv) the business of Emerald or any subsidiary of Emerald with any other person being adversely affected,

as a result of the acquisition of Emerald Shares by Confederate.

- (f) **(prescribed occurrences during Offer Period)** that during the Offer Period, none of the following events happen:

- (i) Emerald or a subsidiary resolves to reduce its share capital in any way; or
- (ii) Emerald converts all or any of its shares into a larger or smaller number of shares;
- (iii) Emerald or a subsidiary:
  - (A) makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);

- (B) enters into a buy-back agreement;
  - (C) resolves to approve the terms of a buy-back agreement under section 257C(1) or section 257D(1) of the Corporations Act;
  - (D) issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option;
  - (E) issues, or agrees to issue, convertible notes;
  - (F) disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
  - (G) charges, or agrees to charge, the whole, or a substantial part, of its business or property;
  - (H) resolves to be wound up;
  - (I) has a liquidator or provisional liquidator appointed;
  - (J) has a court make an order for its winding up;
  - (K) has an administrator appointed under sections 436A, 436B or 436C of the Corporations Act;
  - (L) executes a deed of company arrangement; or
  - (M) has a receiver or a receiver and manager appointed in relation to the whole, or a substantial part, of the property of Emerald or of a subsidiary.
- (g) **(prescribed occurrences during Period from Announcement Date to Offer Period)** that during the period commencing on the Announcement Date and ending immediately before the commencement of the Offer Period, none of the events described in condition (f) above occur.
- (h) **(access to information)** at all times during the period from the announcement Date to the end of the Offer Period, Emerald promptly (and in any event within 2 Business Days) provides to Confederate a copy of all information which is not generally available (within the meaning of the Corporations Act) related to Emerald or a member of the Emerald Group or any of their respective businesses or operations that has been provided by Emerald or a member of the Emerald Group or any of their respective officers, employees, advisers or agents to any person (other than Confederate) for the purpose of soliciting, encouraging or facilitating a proposal or offer by that person, or by any other person, in relation to a transaction under which:
- (i) any person (together with its Associates) may acquire voting power of 5% or more in Emerald or any member of the Emerald Group (whether by way of takeover bid, compromise or arrangements under Part 5.1 of the Corporations Act, or otherwise);

- (ii) any person may acquire, directly or indirectly (including by way of joint venture, dual listed company structure or otherwise), any interest in all or a substantial part of the business or assets of Emerald or any member of the Emerald Group; and
  - (iii) that person may otherwise acquire control of or merge or amalgamate with Emerald or any member of the Emerald Group.
- (i) **(absence of new litigation)** that before the end of the Offer Period, neither Emerald nor any subsidiary of Emerald is or has become the subject of any litigation which is commenced, is threatened to be commenced, is announced, or is made known to Confederate (whether or not becoming public), and which may be reasonably be expected to result in a judgment against Emerald or any subsidiary of Emerald of A\$50,000 or more (after taking into account any reduction of the judgment which may reasonably be expected by way of set-off or cross claim), other than that which has been publicly announced prior to the Announcement Date.
  - (j) **(ASX conditions)** all conditions that ASX imposes (if any) as a pre-requisite to completion of the Offer are fulfilled.
  - (k) **(no excessive termination payments)** that there are no contracts, arrangements or understandings that any payment or other benefit will be made or given to any director, secretary or executive officer of Emerald or any subsidiary of Emerald as compensation for loss of or as consideration for or in connection with his or her retirement from office as a director, secretary or executive officer or any other office in connection with the management of Emerald or any subsidiary of Emerald which exceed in value the aggregate sum of A\$50,000.
  - (l) **(indices fall)** the S&P ASX 200 Index is for any three consecutive days after the date of the Announcement, 10% or more below its respective level as at the close of business on the business day prior to the Announcement Date.
  - (m) **(approvals by Public Authorities):** between the Announcement Date and the end of the Offer Period, Confederate receives all Approvals that are required by law or by any Public Authority or ASIC:
    - (i) to permit the Offers to be made to and accepted by Emerald Shareholders in all applicable jurisdictions; or
    - (ii) as a result of the Offers or the successful acquisition of the Emerald Shares and which are necessary for the continued operation of the business of Emerald and its subsidiaries or of Confederate and its subsidiaries,

and those Approvals are on an unconditional basis and remain in force in all respects and there is no notice or indication of intention to revoke, suspend, restrict, modify or not renew those Approvals.



(n) **(no break fees)**: that during the period between the Announcement Date and the end of the Offer Period, none of Emerald or any member of the Emerald Group, pays or provides or agrees (whether conditionally or contingently) to pay or provide any benefit to any person, or foregoes or otherwise reduces any payment or benefit or agrees to forgo or reduce any payment or benefit to which it would otherwise be entitled, in connection with any person making or agreeing to participate in, or enter into negotiations concerning:

- (i) a offer for Emerald or any body corporate which is or becomes a subsidiary of Emerald; or
- (ii) any other proposal to acquire any interest (whether equitable, legal, beneficial or economic) in shares in, or assets of, Emerald or any body corporate which is or becomes a subsidiary of Emerald, or to operate Emerald as a single economic entity with another body corporate,

provided that this condition does not apply to a payment, benefit or arrangement:

- (i) for providing professional advisory services to Emerald;
- (ii) which is approved in writing by Confederate;
- (iii) which is approved by a resolution passed at a general meeting of Emerald; or
- (iv) which is made to, provided to, owed by or made with Confederate.

(o) **(no force majeure event)**: that during the period between the Announcement Date and the end of the Offer Period no act of war (whether declared or not) or terrorism, mobilisation of armed forces, civil commotion or labour disturbance, fire or natural disaster, or other event beyond the control of Emerald or the relevant subsidiary occurs which has or is likely to have a materially adverse effect on the assets, liabilities, financial position, performance, profitability or prospects of Emerald and its subsidiaries taken as a whole or of any of them.

(p) **(alternative proposals)**: Emerald does not proceed with any proposal (including a scheme of arrangement) or offer that would if completed substantially in accordance with its terms, result in:

- (i) any person or persons other than Confederate acquiring:
  - (A) all or a substantial part of the assets of Emerald;
  - (B) a relevant interest in more than 20% of the voting shares of Emerald;
  - (C) control of Emerald within the meaning of section 50AA of the Corporations Act; or

- (D) or merging (including by reverse takeover bid) with Emerald; or
- (ii) Emerald and another person or persons operating under a dual listed company, or similar structure.

## **6.2 Nature of conditions**

Each of the conditions set out in each paragraph and subparagraph of section 6 of this Annexure:

- (a) constitutes and will be construed as a separate, several and distinct condition and each of the conditions will not be taken to limit the meaning and effect of any other condition;
- (b) is a condition subsequent; and
- (c) until the expiration of the Offer Period (or in the case of a defeating condition that relates to a circumstance or event referred to in subsection 652C(1) or (2) of the Corporations Act, until three business days after the end of the Offer Period) will be for the benefit of Confederate alone and may be relied upon only by Confederate.

## **6.3 Effect of breach or non-fulfilment**

The breach or non-fulfilment of any of the conditions subsequent set out in section 6 of this Annexure does not, until the end of the Offer Period, prevent a contract arising to acquire your Shares resulting from your acceptance of this Offer, but if at the end of the Offer Period (or, in the case of a defeating condition that relates to a circumstance or event referred to in subsection 652C(1) or (2) of the Corporations Act, at the end of three business days after the end of the Offer Period), in respect of any condition in section 6 of this Annexure:

- (a) Confederate has not declared the Offer (and they have not become) free from that condition; or
- (b) that condition has not been fulfilled,

all contracts resulting from acceptance of this Offer and all acceptances that have not resulted in binding contracts are automatically void. In such a case, Confederate reserves the right to either destroy or despatch at your risk your Acceptance Form and any other documents forwarded by you, to your address as shown on the Emerald register of members, where such address is inside Australia, pre-paid ordinary post, or, where such address is outside Australia, pre-paid airmail. Confederate will also notify ASX Settlement of the lapse of the Offer in accordance with rule 14.19 of the ASX Settlement Operating Rules.

## **6.4 Confederate may decide its Offer is free from all or any of the conditions**

Confederate may at any time at its sole discretion, but in compliance with section 650F and section 630 of the Corporations Act declare the Offer free from all or any of the conditions set out in each paragraph and subparagraph of section 6 of this Annexure which are capable of being waived by notice in writing to Emerald:

- (a) in the case of a defeating condition that relates to the happening of a circumstance or event referred to in subsection 652C(1) or (2) of the Corporations Act – not later than three business days after the end of the Offer Period; and
- (b) in any other case – not later than seven days before the end of the Offer Period.

## **6.5 Date for giving notice on status of conditions**

The date for giving a notice on the status of the conditions as required by section 630(1) of the Corporations Act is 22 November 2013, subject to variation in accordance with section 630(2) of the Corporations Act in the event that the Offer Period is extended.

## **7. EFFECT OF ACCEPTANCE**

### **7.1 Effect of acceptance**

By accepting this Offer in accordance with section 4 of this Annexure (including where the Offer is caused to be accepted in accordance with the ASX Settlement Operating Rules), you will, or will be deemed to have:

- (a) irrevocably authorised Confederate to alter the Acceptance Form on your behalf by:
  - (i) inserting correct details of your Shares;
  - (ii) filling in any blanks remaining on the Acceptance Form; and
  - (iii) rectifying any errors in, and omissions from, the Acceptance Form,

as may be necessary to make the Acceptance Form an effectual acceptance of this Offer and to enable registration of the transfer of your Shares to Confederate;
- (b) accepted this Offer (and any variation of it) and agreed to its terms and conditions, in respect of 30% of your Shares, (together with all Rights attaching to them), any difference between that number and the number of Shares shown in the Acceptance Form, unless section 1.3 of this Annexure applies in which case you will, or will be deemed to have, accepted this Offer in respect of all of your Shares;
- (c) subject to the Offer being declared free from the conditions set out in section 6 of this Annexure (or those conditions being fulfilled), agreed to transfer 30% of your Shares to Confederate unless section 1.3 of this Annexure applies in which case you will, or will be deemed to have, agreed to transfer all of your Shares;
- (d) represented and warranted to Confederate:
  - (i) as a condition of the contract resulting from your acceptance of the Offer, that at the time of acceptance and at the time of transfer to Confederate:

- (A) you have paid to Emerald all amounts which are due for payment in respect of your Shares;
  - (B) all of your Shares are fully paid and Confederate will acquire good title to your Shares and full beneficial ownership of your Shares free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind; and
  - (C) you have full power and capacity to accept this Offer and to sell and transfer the legal and beneficial ownership of your Shares (together with all Rights attaching to them) to Confederate;
- (e) with effect from the later of the acceptance of this Offer and the date that any contract resulting from acceptance of this Offer becomes, or is declared, free from its conditions, appointed Confederate and each of its directors, secretaries and other officers from time to time severally as your agent and true and lawful attorney, with power to do all things which you could lawfully do concerning your Shares or in exercise of any right or power derived from the holding of your Shares, including, without limitation, to:
- (i) attend and vote in respect of your Shares at any meeting of Emerald;
  - (ii) appoint a proxy or proxies to attend and vote on your behalf in respect of your Shares at any meeting of Emerald;
  - (iii) requisition or join with other holders of Shares in requisitioning or convening (or both) a meeting of Emerald;
  - (iv) demand a poll for any vote to be taken at any meeting of Emerald;
  - (v) propose or second any resolution to be considered at any meeting of Emerald;
  - (vi) receive from Emerald or any other party, and retain, any share certificates which were held by Emerald, or any other party;
  - (vii) sign all documents (including an instrument appointing one of Confederate's directors as a proxy in respect of any or all of your Shares and any application to Emerald for a replacement certificate in respect of any share certificate which has been lost or destroyed) and resolutions relating to your Shares, and generally to exercise all powers and rights which you may have as a Shareholder and perform such actions as may be appropriate in order to vest good title in your Shares (together with all Rights attaching to them) in Confederate; and
  - (viii) do all things incidental and ancillary to the foregoing,

and to have agreed that in exercising the powers conferred by that power of attorney, the attorney may act in the interests of Confederate as the intended registered holder and beneficial holder of your Shares. This appointment is irrevocable and terminates upon registration of a transfer to Confederate of your Shares. Confederate will indemnify you and keep you indemnified in respect of all costs, expenses and obligations which might be incurred or undertaken as a result of the exercise by an attorney of any powers under this subsection;

- (f) agreed to fully indemnify Confederate in respect of any claim or action against it or any loss, damage or liability whatsoever incurred by it as a result of you not producing your Holder Identification Number or Securityholder Reference Number or in consequence of the transfer of your Shares to Confederate being registered by Emerald without production of your Holder Identification Number or Securityholder Reference Number;
- (g) irrevocably authorised Confederate (and any nominee or nominees of Confederate) to notify Emerald on your behalf that your place of address for the purpose of serving notices upon you in respect of your Shares is the address as specified in the notification, and that all such notices are to be marked care of Confederate and to have directed Emerald to serve all correspondence, payments or notifications in respect of any Rights and other communications and documents whatsoever in respect of those Shares to Confederate at that address;
- (h) irrevocably authorised and directed Emerald to pay Confederate, or to account to Confederate for, all Rights in respect of your Shares, subject, however, to any such Rights being received by Confederate being accounted for by Confederate to you if this Offer is withdrawn or any contract resulting from your acceptance of this Offer is rescinded or rendered void;
- (i) irrevocably authorised Confederate (and any nominee or nominees of Confederate) to cause a message to be transmitted in accordance with ASX Settlement Operating Rule 14.17.1 (and at a time permitted by ASX Settlement Operating Rule 14.17.1(b)) so as to transfer your Shares to Confederate's Takeover Transferee Holding (as defined in the ASX Settlement Operating Rules), regardless of whether Confederate has at that time paid or provided the consideration due to you under this Offer; and
- (j) agreed, subject to the conditions in section 6 of this Annexure being satisfied or waived, to execute all documents, transfers and assurances as may be necessary or desirable to convey your Shares and Rights to Confederate.

Confederate may at any time deem the receipt of a signed Acceptance Form to be a valid acceptance of this Offer even though you omit to include your share certificate(s) (if any) or there is not compliance with any one or more of the other requirements for acceptance but, if Confederate does so, Confederate is not obliged to make the consideration available to you until all of the requirements for acceptance have been met.

## **7.2 Continuing representations and warranties**

The representations, warranties, undertakings and authorities referred to in section 7.1 of this Annexure and this section 7 of this Annexure will (unless otherwise stated) remain in force after you receive the consideration for your Shares and after Confederate becomes registered as holder of them.

## **8. ACCEPTANCES BY TRANSFEREES AND NOMINEES**

### **8.1 Who may accept the Offer**

During the Offer Period:

- (a) subject to section 1.2 of this Annexure any person who is able to give good title to a parcel of your Shares may accept (if they have not already accepted an offer in the form of this Offer for those Shares) as if an offer on terms identical with this Offer has been made to them; and
- (b) any person who holds one or more parcels of Shares as trustee or nominee, or otherwise on account of another person, may accept as if a separate and distinct offer had been made in relation to:
  - (i) each of those parcels; and
  - (ii) any parcel they hold in their own right.

### **8.2 Holding Shares**

A person is taken to hold Shares if the person is registered as the holder of those Shares.

### **8.3 Holding Shares on trust or as a nominee**

A person is taken to hold Shares on trust for, as nominee for, or on account of, another person if they:

- (a) are entitled to be registered as the holder of particular Shares; and
- (b) hold their interest in the Shares on trust for, as nominee for, or on account of, that other person.

### **8.4 Effective acceptance**

An acceptance of an offer pursuant to section 8.1(b) of this Annexure is ineffective unless:

- (a) the person who holds on account of another person, gives Confederate a notice stating that the Shares consist of a separate parcel; and
- (b) the acceptance specifies the number of Shares in the parcel.

### **8.5 Notice of acceptance**

A notice under section 8.4(a) of this Annexure must be made:

- (a) if it relates to Shares entered on a CHESS subregister – in an electronic form approved by the ASX Settlement Operating Rules; or
- (b) otherwise – in writing.

## **9. OTHER MATTERS**

### **9.1 Notices and other communications**

Subject to the Corporations Act, a notice or other communication given by Confederate to you in connection with this Offer shall be deemed to be duly given if it is in writing and:

- (a) is delivered to your address as recorded on the register of members of Emerald; or
- (b) is sent by pre-paid ordinary mail, or in the case of an address outside Australia by pre-paid airmail, to you at that address.

### **9.2 Return of documents**

If:

- (a) this Offer is withdrawn after your Acceptance Form has been sent to Confederate, but before it has been received; or
- (b) for any other reason Confederate does not acquire the Shares to which your Acceptance Form relates,

Confederate reserves the right to either destroy or despatch at your risk your Acceptance Form and any other documents forwarded by you, to your address as shown on the Emerald register of members, where such address is inside Australia, pre-paid ordinary post, or, where such address is outside Australia, pre-paid airmail.

### **9.3 Costs and expenses**

All costs and expenses of the preparation, despatch and circulation of the Offer and all stamp duty payable in respect of a transfer of Shares in respect of which Offer are accepted, will be paid by Confederate. If you hold your Shares through a bank, broker or nominee which charges transaction fees or service charges in connection with your acceptance of the Offer, Confederate will not pay those fees or charges.

### **9.4 Withdrawal**

Confederate may withdraw any unaccepted Offer at any time with the written consent of ASIC and subject to the conditions (if any) specified in such consent.

### **9.5 Variation**

Confederate may vary this Offer in accordance with the Corporations Act.

## **9.6 Governing Law**

This Offer and any contract that results from your acceptance of this Offer are governed by the laws in force in Western Australia.