



## **Board recommended takeover bid for AWE from Mitsui for cash consideration of \$0.95 per share**

AWE Limited (**AWE**) (**ASX: AWE**) refers to its announcement on 31 January 2018 that it had commenced the matching rights process under the Mineral Resources Limited (**MinRes**) (**ASX: MIN**) Scheme Implementation Deed (**SID**), giving MinRes the opportunity to match the proposal received from Mitsui & Co., Ltd. (**Mitsui**) to acquire 100% of the shares in AWE for cash consideration of \$0.95 per share, to be effected by way of an off-market takeover bid for AWE (the **Mitsui Takeover Bid**).

### **Recommended Mitsui Takeover Bid**

AWE advises that MinRes did not match the proposal from Mitsui within the time period specified in the MinRes SID. As the AWE Board has determined that the Mitsui Takeover Bid is superior to the MinRes Scheme proposal, the AWE Board has now withdrawn its recommendation of the MinRes Scheme, and unanimously recommends that AWE shareholders accept the Mitsui Takeover Bid at \$0.95 per share, in the absence of a superior proposal and subject to the independent expert concluding that the Mitsui offer price is fair and reasonable<sup>1</sup>. Each of the AWE directors intends to accept, or procure the acceptance of, the Mitsui Takeover Bid in respect of all AWE shares that they own or control, again in the absence of a superior proposal and subject to the independent expert concluding that the offer price is fair and reasonable.

AWE has entered into a Bid Implementation Deed (**BID**) with Mitsui in respect of the Mitsui Takeover Bid, a copy of which is attached to this announcement. AWE will also now terminate the MinRes SID. Accordingly the MinRes Scheme will now not proceed.

### **Summary of the Mitsui Takeover Bid terms**

The Mitsui offer price of \$0.95 per share values AWE at a market capitalisation of \$602 million<sup>2</sup>, and represents an attractive premium of:

- 74.3% to AWE's closing price of \$0.545 per share on 29 November 2017, being the day prior to the disclosure that China Energy Reserve and Chemical Group Australia (CERCG Australia) had approached AWE with a proposal to acquire the company;
- 74.0% to AWE's 1-month VWAP of \$0.546 per share up to and including 29 November 2017;
- 14.5% to the \$0.83 per share implied value of the MinRes scheme proposal (which is no longer proceeding); and
- 30.1% premium to the \$0.73 per share offered by CERCG Australia.

<sup>1</sup> AWE has appointed Grant Thornton to provide an independent expert's report in relation to whether the Mitsui takeover bid is fair and reasonable to AWE shareholders. Once finalised, the Grant Thornton report will accompany AWE's target statement responding to the Mitsui takeover bid.

<sup>2</sup> Assumes 633,740,255 AWE shares on issue, including issued cash share rights of 8,486,352.



The Mitsui Takeover Bid is subject to a 50.1% minimum acceptance condition, and a limited number of other conditions, which are set out in full in schedule 2 of the Mitsui BID attached to this announcement. The Mitsui Takeover Bid is not subject to any regulatory approvals or financing conditions.

Commenting on the Mitsui Takeover Bid, AWE Chairman Mr Ken Williams said: "The Mitsui proposal, being all cash and pitched at a significant premium to the competing offers received by the AWE board, represented a superior value proposition. This is an excellent opportunity for shareholders to crystallise their investment in AWE at an attractive price".

Mr David Biggs, AWE's CEO and Managing Director added: "It is very satisfying to see the considerable value that we have created from our portfolio, particularly with the Waitsia Gas Project, recognised by such a high quality and respected organisation as Mitsui".

### **Mitsui Bid Implementation Deed**

As discussed above, AWE has entered into the attached Bid Implementation Deed with Mitsui in respect of the Mitsui Takeover Bid. In addition to setting out the agreed bid terms, the deed imposes certain requirements on AWE in respect of the offer, and certain restrictions on the conduct of AWE's business during the offer period. The deed also contains customary exclusivity provisions, and requires AWE to pay a break fee of \$6 million in certain circumstances, including where any AWE director changes their recommendation to recommend a superior proposal.

### **Timetable**

It is expected that Mitsui will lodge its bidder's statement with ASX and ASIC on Friday 9 February 2018, and that Mitsui's offer will be despatched to AWE shareholders on or around Monday 12 February 2018. On that basis, AWE would send its target's statement, including the independent expert's report in connection with the offer, to AWE shareholders on or around 27 February 2018.

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HERBERT  
SMITH  
FREEHILLS

Deed

## Bid implementation deed

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Mitsui & Co., Ltd.

AWE Limited



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## Bid implementation deed

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Date ► 3 February 2018

Between the parties

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Mitsui

**Mitsui & Co., Ltd.**

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Tokyo 100-8631, Japan

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AWE

**AWE Limited**

ABN 70 077 897 440 of Level 12, Suite 1201, 100 Pacific Highway  
North Sydney NSW 2060

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Recitals

- 1 Mitsui is proposing to make a Takeover Bid for all AWE Shares and the AWE Directors are proposing to recommend the Takeover Bid in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Offer is fair and reasonable.
  - 2 The parties have agreed to implement the Takeover Bid on the terms and conditions set out in this deed.
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This deed witnesses as follows:

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## 1 Definitions and interpretation

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### 1.1 Definitions

The meanings of the terms used in this deed are set out in Schedule 1.

### 1.2 Interpretation

This deed must be interpreted in accordance with the interpretation rules in Schedule 1.

### 1.3 Deed components

This deed includes any schedule.

## 2 The Takeover Bid

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### 2.1 Making the Takeover Bid

Subject to clause 2.2, Mitsui agrees to:

- (a) make offers pursuant to an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the AWE Shares on terms and conditions no less favourable to AWE Shareholders than the Agreed Bid Terms (together, the **Offers** and each, an **Offer**); and
- (b) without limiting this clause 2.1, publicly announce a proposal to make the Takeover Bid constituted by the dispatch of the Offers, in accordance with clause 4, as soon as reasonably practicable after both parties have executed this deed.

### 2.2 Mitsui may use Subsidiary

- (a) Subject to clause 2.2(b), Mitsui may satisfy its obligations under clause 2.1 by procuring a Subsidiary to perform its obligations under clause 2.1, in which case references to:
  - (1) the Takeover Bid are references to the takeover bid by that Subsidiary; and
  - (2) Mitsui making the Takeover Bid are references to Mitsui causing that Subsidiary to make the Takeover Bid.
- (b) Mitsui acknowledges and agrees that if, pursuant to clause 2.2(a), it elects to procure a Subsidiary to perform its obligations under clause 2.1, Mitsui remains liable to AWE for the due performance of those obligations.

### 2.3 AWE Directors' recommendation and acceptance

- (a) AWE represents and warrants that:



- (1) the AWE Board has met and considered the possibility of Mitsui agreeing to make the Takeover Bid; and
  - (2) each of the AWE Directors has informed AWE that, if Mitsui publicly announces a proposal to make the Takeover Bid, they will:
    - (A) unanimously recommend that AWE Shareholders accept the Offer to be made to them under the Takeover Bid; and
    - (B) accept, or procure the acceptance of, the Offer in respect of any AWE Shares that they own or control, including the AWE Shares set out in Schedule 5,

in each case in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Offer is fair and reasonable.
- (b) During the Offer Period, AWE must, subject to clause 2.3(c):
- (1) in the absence of a Superior Proposal, use reasonable endeavours to procure that the AWE Directors support the Takeover Bid and participate in efforts reasonably required by Mitsui to promote the merits of the Takeover Bid, including meeting with key AWE Shareholders, analysts, management, joint venture partners and press if reasonably requested to do so by Mitsui;
  - (2) procure that, subject to clause 2.3(c) the AWE Directors unanimously recommend that AWE Shareholders accept the Offers made to them (in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Offer is fair and reasonable) and do not make any public statement or take any other public action which would suggest that the Takeover Bid is not unanimously so recommended by the AWE Directors;
  - (3) use reasonable endeavours to procure that, subject to clause 2.3(c) the AWE Directors collectively, and each AWE Director individually, do not change, withdraw or modify the recommendation for AWE Shareholders to accept the Offer;
  - (4) subject to the AWE Directors making the recommendation in clause 2.3(b)(2), include in all public statements relating to the Takeover Bid, a statement to the effect that:
    - (A) the AWE Directors unanimously recommend that AWE Shareholders accept the Offers made to them;
    - (B) each AWE Director intends to accept, or procure the acceptance of, the Offers made to them in respect of all AWE Shares they own or control, including the AWE Shares set out in Schedule 5,

in each case in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Offer is fair and reasonable to AWE Shareholders.
- (c) AWE's obligations under clause 2.3(b) do not apply if AWE has complied with its obligations under clause 9 and:
- (1) the:
    - (A) Independent Expert provides a report to AWE that concludes that the Offer is not fair and reasonable; and

- (B) AWE Directors make a public statement that the AWE Directors no longer recommend that AWE Shareholders accept the Offers made to them within 2 Business Days after AWE receives a report of the kind referred to in clause 2.3(c)(1)(A); or
- (2) each of the following has occurred:
  - (A) AWE has received, other than as a result of a breach of clause 9, and continued to be in possession of, a Superior Proposal; and
  - (B) Mitsui's rights under clause 9.6 have been exhausted.

## 2.4 AWE Shares issued during the Offer Period

Mitsui agrees that, subject to section 617 of the Corporations Act, it will extend Offers to all AWE Shares that are issued as a result of the exercise of any Cash Share Rights during the period from the Record Date to the end of the Offer Period.

## 2.5 Cash Share Rights

- (a) Subject to clause 2.6, AWE must take such action as is necessary after the date of this deed but before the end of the Offer Period to ensure that any Cash Share Rights which have not already vested, so vest and convert to AWE Shares prior to the end of the Offer Period, which actions shall include procuring that the AWE Board:
  - (1) resolve that if Mitsui has Relevant Interests in at least 50.1% of the AWE Shares and the Offer becomes or is declared unconditional, this constitutes a change of control for the purposes of the Cash Share Rights;
  - (2) resolve, subject to those circumstances occurring, to waive unsatisfied vesting conditions and accelerate the exercise period such that all Cash Share Rights convert to AWE Shares prior to the end of the Offer Period and no Cash Share Rights will convert to cash or be exchanged for cash; and
  - (3) notify such Cash Share Rights Holders of such accelerating as soon as practicable and in any event prior to the end of the Offer Period.
- (b) Subject to clause 2.5(c), AWE must, prior to the end of the Offer Period, issue the number of AWE Shares required by the terms of those Cash Share Rights on such vesting, so that the relevant former holders of the Cash Share Rights, as the case may be, can participate in the Offer.
- (c) Nothing in this clause 2.5 will apply to those entitlements the subject of the CSR Grant 2017.

## 2.6 Cash Share Rights – CSR Grant 2017

All entitlements the subject of the CSR Grant 2017 will be cash settled by AWE prior to the end of the Offer Period on the basis of an AWE Share price of A\$0.95.

## 3 Releases

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### 3.1 AWE and AWE Directors and officers

- (a) Mitsui releases its rights, and agrees with AWE that it will not make a claim, against any AWE Indemnified Party as at the date of this deed and from time to time in connection with:
- (1) any breach of any covenants, representations and warranties of AWE or any other member of AWE Group in this deed; or
  - (2) any disclosures containing any statement which is false or misleading whether in content or by omission; or
  - (3) any failure to provide information,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where AWE Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 3.1(a) limits Mitsui's rights to terminate this deed under clause 12.2(a).
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) AWE receives and holds the benefit of this clause to the extent it relates to each AWE Indemnified Party as trustee for each of them.

### 3.2 Mitsui and Mitsui directors and officers

- (a) AWE releases its rights, and agrees with Mitsui that it will not make a claim, against any Mitsui Indemnified Party as at the date of this deed and from time to time in connection with:
- (1) any breach of any covenants, representations and warranties of Mitsui or any other member of Mitsui Group in this deed; or
  - (2) any disclosure containing any statement which is false or misleading whether in content or by omission,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where Mitsui Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 3.2(a) limits AWE's rights to terminate this deed under clause 12.2(b).
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Mitsui receives and holds the benefit of this clause to the extent it relates to each Mitsui Indemnified Party as trustee for each of them.

### 3.3 Deeds of indemnity and insurance

- (a) Subject to Mitsui acquiring a Relevant Interest in 50.1% or more of the AWE Shares, Mitsui undertakes in favour of AWE and each other person who is a AWE Indemnified Party that it will:
- (1) subject to clause 3.3(d), for a period of 7 years from the Control Date, ensure that the constitutions of AWE and each other AWE Group

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

- (2) procure that AWE and each AWE Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained, subject to clause 3.3(d), for a period of 7 years from the retirement date of each director and officer so long as it is available on commercially reasonable terms.
- (b) The undertakings contained in clause 3.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) AWE receives and holds the benefit of clause 3.3(a), to the extent it relates to the other AWE Indemnified Parties, as trustee for them.
- (d) The undertakings contained in clause 3.3(a) are given until the earlier of the end of the relevant period specified in clause 3.3(a) or the relevant AWE Group Member ceasing to be part of Mitsui Group.
- (e) Mitsui acknowledges that, notwithstanding any other provision of this deed, AWE may, prior to the close of the Offer Period, enter into arrangements to secure directors and officers run-off insurance for up to a 7 year period on terms consistent with any existing directors' and officers' insurance held by AWE or on market standard terms, and that any actions to facilitate that insurance or in connection therewith will not be a breach any Bid Condition or any provision of this deed.

## 4 Public announcement of Takeover Bid

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Immediately following the execution and exchange of this deed, Mitsui and AWE must each issue a public announcement concerning the Takeover Bid substantially in the form agreed between the parties.

## 5 Facilitating the Offer

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### 5.1 Bidder's Statement and Target's Statement

- (a) Mitsui will, to the extent practicable, give AWE a reasonable opportunity to review an advanced draft of the Bidder's Statement at least 2 Business Days before Mitsui proposes to lodge the Bidder's Statement with ASIC, and will consult in good faith with AWE with respect to any comments AWE may have on the draft Bidder's Statement .
- (b) AWE will, to the extent practicable give Mitsui a reasonable opportunity to review an advanced draft of the Target's Statement at least 2 Business Days before AWE proposes to lodge the Target's Statement with ASIC, and will consult in good faith with Mitsui in relation to any comments Mitsui may have on the draft Target's Statement .



## 5.2 Dispatch of Offers

- (a) AWE agrees that the Offers and accompanying documents to be sent by Mitsui under item 6 of section 633(1) of the Corporations Act may be sent on a date that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act, being the earlier date specified in the Timetable or such other date as Mitsui may nominate.
- (b) Each party agrees to use reasonable endeavours to implement the Takeover Bid in accordance with the Timetable.

## 5.3 Access to information

- (a) Each party agrees to provide the other party, on a timely basis, with information that may be reasonably required to assist in the preparation of the Bidder's Statement or the Target's Statement (as applicable).
- (b) AWE agrees to provide to Mitsui on the Business Day after the date of this deed and on each reasonable request thereafter until the end of the Offer Period, at no cost to Mitsui, such information about AWE Shareholders as reasonably requested by Mitsui to make the Offers and solicit acceptances, including the:
  - (1) register of members of AWE and any updates to it; and
  - (2) register of information that is required to be maintained in accordance with section 672DA of the Corporations Act, along with any consolidated reporting held or received by AWE in relation to the information contained in that register or analysis.

## 5.4 Bid Conditions

- (a) Subject to clause 5.4(b), each party:
  - (1) must use its reasonable endeavours to satisfy the Bid Conditions as soon as practicable after the date of this deed; and
  - (2) agrees not to do, or omit to do, anything which will, or is likely to, result in any of the Bid Conditions being breached.
- (b) Nothing in this clause 5.4 prevents AWE or the AWE Board from taking, or failing to take, action where to do otherwise would, in the opinion of the AWE Board (determined in good faith and acting reasonably after receiving written legal advice from external lawyers), constitute a breach of the AWE Directors' fiduciary or statutory duties.
- (c) Each party must keep the other promptly and reasonably informed of the steps it has taken and its progress towards satisfaction of the Bid Conditions, and promptly notify the other if it becomes aware that any Bid Condition has been satisfied. If any event occurs or becomes apparent which would cause any of the Bid Conditions to be breached or cause satisfaction of them to be unreasonably delayed, each party must, to the extent that the party is actually aware of such information, immediately notify the other party of that event.
- (d) A reference in this clause 5.4 to a Bid Condition being breached includes a reference to the Bid Condition not being, or not being capable of being, satisfied.

## 6 Conduct of AWE during Offer Period

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### 6.1 Conduct of AWE business

- (a) Subject to clause 6.4, from the date of this deed up to and including the end of the Offer Period, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, and without limiting any other obligations of AWE under this deed, AWE must conduct its businesses and operations, and must procure that the AWE Group conducts its businesses and operations, in the ordinary and usual course of business and:
- (1) conduct its businesses and operations in the ordinary and usual course consistent with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this deed;
  - (2) use all reasonable efforts to preserve their relationships with joint venture partners, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
  - (3) use all reasonable efforts to ensure that all assets are maintained in the normal course consistent with the manner in which those assets have been maintained in the 12 month period prior to the date of this deed;
  - (4) not vary, grant any waiver of rights under, extend, renew or terminate a Material Contract;
  - (5) use all reasonable efforts to comply in all material respects with all Material Contracts, and with law, authorisations and licences applicable to each member of the AWE Group; and
  - (6) not take or fail to take any action that would, or would be likely to, prevent a Bid Condition being satisfied or result in a Bid Condition not being satisfied.

### 6.2 Notification

From the date of this deed until the end of the Offer Period unless Mitsui agrees otherwise in writing, AWE will promptly notify Mitsui of anything of which it becomes aware that:

- (a) makes any information which is material in the context of the AWE Group, taken as a whole and publicly filed by AWE (either on its own account or in respect of any of its Subsidiaries) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
- (b) makes any of AWE's warranties in clause 11 incorrect in any material respect, where such breach of warranty is of a type referred to in clause 12.2(a)(3).

### 6.3 Prohibited actions

- (a) Subject to clause 6.4, from the date of this deed up to and including the end of the Offer Period, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, AWE must not, and must procure that the AWE Group does not:

- (1) in respect of any single transaction or series of related or similar transactions, acquire or dispose of (including the granting of an option or other right or entitlement over) any interest in:
  - (A) assets, a business, real property, entity or undertaking, the value (in relation to disposals only, as recorded in AWE's consolidated statement of financial position as at 30 June 2017) of which exceeds \$10 million in aggregate; or
  - (B) the Key AWE Projects;
- (2) enter into, offer to enter into, agree to enter into any transaction under which any third party would acquire any legal or economic interest in the Waitsia Project, any current or future hydrocarbon production (including royalties) from the Waitsia Project, or right to sell or market that hydrocarbon production;
- (3) enter into, offer to enter into, or agree to enter into any engineering, procurement and construction arrangement or build-own operate arrangement (or any substantially similar arrangement) in relation to the development of any of AWE's projects (which, for the avoidance of doubt, includes the execution of any binding arrangements with any of the tenderers noted in AWE's ASX announcement entitled "AWE Receives Tenders for Waitsia Stage 2 construction" dated 8 December 2017);
- (4) pay or agree to pay any financial adviser any fee, cost or other form of compensation or remuneration that is directly or indirectly as a result of, contingent on, or in connection with:
  - (A) AWE or Mitsui entering into this deed;
  - (B) Mitsui acquiring a Relevant Interest in AWE;
  - (C) the Takeover Bid or a transaction contemplated by this deed; or
  - (D) any Competing Proposal,
 where all such amounts paid would exceed, in aggregate, \$8 million;
- (5) enter into, offer to enter into, agree to enter into, or announce an intention to enter into, any Material Gas Sales Agreement;
- (6) except as required by law or as provided in an existing contract in place at the date of this deed, make any material change to the terms of employment of (including increasing the remuneration or compensation of or accelerating the rights to benefits of any kind), or grant or pay any bonus, incentive, retention, severance or termination payment to, any director, officer, executive or senior manager of the AWE Group;
- (7) enter into a new employment contract with a potential employee of the AWE Group under which contract the total remuneration payable to that potential employee would exceed \$200,000 in any 12 month period (other than to replace a role that becomes vacant after the date of this deed as a result of the resignation or termination for cause of an existing employee or in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this deed, in each case with prior consultation between Mitsui and AWE);





- (8) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the AWE Group;
- (9) incur any additional financial indebtedness (except for draw-downs on existing financing arrangements of the AWE Group consistent with the AWE Group's current budget), or guarantee or indemnify the obligations of any person other than a member of the AWE Group, other than in the usual and ordinary course of business and consistent with past practice;
- (10) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing financing arrangement, agreement or instrument;
- (11) incur or enter into any new commitments involving the purchase of plant and equipment (as defined in AWE's statement of cash flows) of more than \$1 million in aggregate without having first consulted with Mitsui;
- (12) give or agree to give a financial benefit to a related party of AWE;
- (13) enter into, terminate or amend the terms of a Material Contract;
- (14) modify the rules of any share based incentive plan or scheme;
- (15) amend its constitution;
- (16) alter in any material respect any accounting policy of any member of the AWE Group; or
- (17) agree to do any of the matters set out above.

## 6.4 Permitted activities

The obligations of AWE under clauses 6.1 and 6.3 do not apply in respect of any matter:

- (a) required to be done or procured by AWE pursuant to this deed, the Offer or Takeover Bid generally, or which is otherwise contemplated by this deed, the Offer or Takeover Bid;
- (b) Fairly Disclosed in writing to the Mitsui Group prior to the date of this deed as being actions that the AWE Group intends to carry out between the date of this deed and the end of the Offer Period (including any transaction, expenditure or other matter disclosed in operating and development budgets of the AWE Group provided to Mitsui or its Authorised Persons prior to the date of this deed);
- (c) Fairly Disclosed in public filings to ASX prior to the date of this deed as being actions that the AWE Group intends to carry out between the date of this deed and the end of the Offer Period other than in relation to the actions described in clauses 6.3(a)(3) and 6.3(a)(5);
- (d) required to be done by the AWE Group (or the Related Persons of any member of the AWE Group) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (e) that is necessary or desirable to facilitate the payment or expenditure by any member of the AWE Group as part of a work program or budget approved by the AWE Board prior to the date of this deed (including any deviation to such work program or budget which is approved by the AWE Group prior to the date





of this deed which has been Fairly Disclosed in writing to the Mitsui Group prior to the date of this deed;

- (f) pertaining to the exercise of rights or obligations under a joint venture or joint operating agreement by the relevant member of the AWE Group where the failure of the relevant member of the AWE Group to agree, or vote in favour of, any such arrangement would result in the sole risk rights (or any substantially similar rights) becoming triggered or capable of operation under the relevant joint venture or joint operating agreement, provided if such matter relates to any engineering, procurement and construction arrangement or build-own operate arrangement (or any substantially similar arrangement) in relation to the development of any of AWE's projects, including the Waitsia Project (whether or not in connection with the execution of any arrangements with tenderers referred to in AWE's ASX announcement entitled "AWE Receives Tenders for Waitsia Stage 2 construction" dated 8 December 2017) then the exercise of rights or obligations by the relevant member of the AWE Group shall not occur without the prior written approval of Mitsui being obtained (such approval not to be unreasonably withheld or delayed);
- (g) relating to any transaction or arrangement in connection with a Material Gas Sales Agreement (not relating to the Waitsia Project) that a joint venture partner of any member of the AWE Group proposes to the relevant member of the AWE Group in circumstances where:
  - (1) the Material Gas Sales Agreement is presented or proposed to the relevant member of the AWE Group as part of joint marketing arrangements and either the relevant AWE Group member has no veto right in respect of entry into the agreement or, if the relevant AWE Group member does not enter the agreement, then the other joint venture partner may lift the relevant AWE Group members' share of the petroleum that would have otherwise been the subject of the agreement; or
  - (2) the prior written approval of Mitsui has been obtained (such approval not to be unreasonably withheld or delayed);
- (h) relating to the sale, disposal or supply of hydrocarbons from the Casino Project for a term of less than 24 months at not less than fair market value, or to the processing of those hydrocarbons on arm's length terms;
- (i) that is necessary or desirable to facilitate compliance by the AWE Group with best practice industry guidelines in relation to work health and safety standards;
- (j) required by law or by an order of any court or Government Agency; or
- (k) the undertaking of which Mitsui has previously approved in writing.

## 6.5 Appointment of directors

As soon as practicable after Mitsui has relevant interests in at least 50.1% of the AWE Shares and the Offer becomes or is declared unconditional, if requested by Mitsui, AWE must use its best endeavours to procure the resignation and appointment of directors of AWE (and its Subsidiaries) such that a majority of the directors of AWE are directors nominated by Mitsui in writing.

## 6.6 Access

In the period from the date that Mitsui has Relevant Interests in at least 50.1% of the AWE Shares and the Offer becomes or is declared unconditional, AWE must provide Mitsui with all reasonable access during normal business hours and on reasonable notice



to the management, offices, sites, books, records and business operations of AWE that Mitsui reasonably requires in order to implement the Offer or for Mitsui to prepare for the transition of ownership of the AWE Group. Mitsui may only exercise its right of access under the clause provided that:

- (a) it has provided AWE with reasonable prior notice of the access it requires (including the identity of its representatives who are to exercise that right of access on behalf of Mitsui);
- (b) the access will not result in any AWE Group member breaching any obligation of confidentiality or other restriction as to such disclosure of information;
- (c) nothing in this clause 6.6 will require AWE to provide Mitsui with any information concerning the consideration of the Offer or of any actual or potential Competing Proposal by the AWE Board or AWE management team;
- (d) the access will not, in the reasonable opinion of AWE, unreasonably interfere with the conduct of the business of the AWE Group; and
- (e) Mitsui and each of its representatives who are to exercise its right of access under this clause agree to comply with AWE's reasonable requirements (including allowing oversight and participation by AWE's representatives and entering into appropriate confidentiality undertakings no more onerous in effect than the terms of the Confidentiality Agreement) and directions in relation to that access.

## 6.7 Change of control

- (a) As soon as practicable after the date of this deed, the parties must:
  - (1) seek to identify any change of control or similar provisions in any contract to which a member of the AWE Group is a party which may be triggered by the implementation of the Offer (**Change of Control Requirements**); and
  - (2) use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents in accordance with the agreed strategy.
- (b) Mitsui and its Authorised Persons must not contact any counterparties to such contracts without the approval of AWE.
- (c) A failure by the AWE Group to obtain any landlord or third party consent as part of the Change of Control Requirements will not constitute a breach of this deed by AWE and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## 7 Takeover Bid – variation and waiver

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### 7.1 Variation

Mitsui may vary the terms and conditions of the Takeover Bid in any manner which is permitted by the Corporations Act, provided that the varied terms and conditions are not less favourable to AWE Shareholders than the Agreed Bid Terms.

## 7.2 Waiver of Bid Conditions and extension

Subject to the Corporations Act, Mitsui may declare the Takeover Bid to be free from any Bid Condition or extend the Takeover Bid at any time.

# 8 Reimbursement Fee

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## 8.1 Background to Reimbursement Fee

- (a) Mitsui and AWE acknowledge that, if they enter into this deed and the Takeover Bid is subsequently not implemented, Mitsui will incur significant costs, including those set out in clause 8.3.
- (b) In these circumstances, Mitsui has requested that provision be made for the payments outlined in this clause 8, without which Mitsui would not have entered into this deed or have otherwise agreed to implement the Takeover Bid.
- (c) AWE confirms that the AWE Board:
  - (1) has received external legal advice in relation to this deed and the operation of this clause 8; and
  - (2) having taken advice from its external legal advisers and financial advisers, believes that the Takeover Bid will provide benefits to AWE and AWE Shareholders and that it is appropriate for AWE to agree to the payments referred to in this clause 8 in order to secure Mitsui's participation in the Takeover Bid.

## 8.2 Reimbursement Fee triggers

AWE must pay the Reimbursement Fee to Mitsui without set-off or withholding, if:

- (a) **(Competing Proposal completes)** an actual, proposed or potential Competing Proposal of any kind (or any material revision to a previously announced Competing Proposal of any kind) is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of this deed, the Third Party who announced or made the Competing Proposal or any Related Body Corporate of that Third Party completes a Competing Proposal of a kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; :
- (b) **(failure to recommend)** in AWE's public announcement required by clause 4, any AWE Director fails to recommend that AWE Shareholders accept an Offer under the Takeover Bid as described in clauses 2.3(a)(2)(A) and 2.3(b)(2);
- (c) **(change of recommendation)** during the Exclusivity Period, any AWE Director withdraws, adversely revises or adversely qualifies his or her support of the Takeover Bid or his or her recommendation that AWE Shareholders accept the Offer (including where a Competing Proposal is announced and is recommended by any AWE Director) unless that change in recommendation is due to:
  - (1) the Independent Expert concluding in the Independent Expert's Report that the Offer is not fair and reasonable (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal); or



- (2) AWE being entitled to terminate this deed pursuant to clauses 12.1(a) or 12.2(b) and having given the appropriate termination notice to Mitsui; or
- (d) **(Mitsui termination)** Mitsui terminates this deed in accordance with clauses 12.1(a)(1), 12.1(b), or 12.2(a).

### 8.3 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse Mitsui for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Takeover Bid (excluding success fees);
  - (b) reasonable opportunity costs incurred in engaging in the Takeover Bid or in not engaging in other alternative acquisitions or strategic initiatives;
  - (c) costs of management and directors' time in planning and implementing the Takeover Bid;
  - (d) out of pocket expenses incurred by Mitsui and Mitsui's employees, advisers and agents in planning and implementing the Takeover Bid;
- and the parties agree that:
- (e) the costs actually incurred by Mitsui will be of such a nature that they cannot all be accurately ascertained; and
  - (f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.

### 8.4 Timing of payment of Reimbursement Fee

- (a) A demand by Mitsui for payment of the Reimbursement Fee under this clause 8 must:
  - (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account in the name of Mitsui into which AWE is to pay the Reimbursement Fee.
- (b) AWE must pay the Reimbursement Fee into the account nominated by Mitsui, without set-off or withholding, within 5 Business Days after receiving a demand for payment where Mitsui is entitled under clause 8.2 to the Reimbursement Fee.

### 8.5 AWE Reimbursement Fee not payable

Despite any other provision of this deed, if Mitsui acquires Relevant Interests in at least 50.1% of the AWE Shares and the Offer becomes or is declared unconditional, then:

- (a) the Reimbursement Fee is not payable by AWE to Mitsui; and
- (b) if the Reimbursement Fee or any part of it has already been paid by AWE to Mitsui it must be refunded by Mitsui within 5 Business Days after a written demand for payment is provided by AWE to Mitsui.



## 8.6 AWE limitation of liability

Notwithstanding any other provision of this deed:

- (a) the maximum liability of AWE to all other parties under or in connection with this deed including in respect of any breach of this deed will be the Reimbursement Fee;
- (b) a payment by AWE in accordance with this clause 8 represents the sole and absolute liability of AWE and any AWE Indemnified Party under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by AWE in connection with this deed; and
- (c) the amount of the Reimbursement Fee paid to Mitsui under this clause 8 shall be reduced by the amount of any loss or damage recovered by any other party in relation to a breach of this deed.

## 8.7 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Reimbursement Fee (**Impugned Amount**):

- (a) would, if paid, be unlawful for any reason;
  - (b) involves a breach of the fiduciary or statutory duties of the AWE Board; or
  - (c) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,
- then
- (d) the requirement to pay the Reimbursement Fee does not apply to the extent of the Impugned Amount; and
  - (e) if Mitsui has received the Impugned Amount, it must refund it within 5 days of the final determination being made.

## 8.8 Reimbursement Fee payable only once

Notwithstanding any other provision of this deed, where the Reimbursement Fee becomes payable to Mitsui under clause 8.2 and is actually paid to Mitsui, Mitsui cannot make any claim against AWE for payment of any subsequent Reimbursement Fee.

# 9 Exclusivity

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## 9.1 Cease discussions

- (a) Subject to clause 9.1(c), AWE must cease any discussions or negotiations existing as at the date of this deed relating to any actual, proposed or potential Competing Proposal.
- (b) AWE agrees not to waive, and to enforce, any standstill obligations of any Third Party, except in relation to a Competing Proposal where Mitsui has failed to provide a Counter Proposal which satisfies clause 9.6(d). AWE represents that it has not waived any standstill obligations contained in any confidentiality agreement that it has entered into since 30 June 2017.



- (c) Nothing in this clause prevents or restricts AWE from taking any actions necessary to respond to the CERCG Takeover Bid.

## 9.2 No shop

During the Exclusivity Period, AWE must not, and must ensure that its Related Bodies Corporate do not, except with the prior written consent of Mitsui, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any third party in relation to (or that could reasonably be expected to lead to) a Competing Proposal, or communicate any intention to do any of these things.

## 9.3 No talk

- (a) Subject to clause 9.7, during the Exclusivity Period, except with the prior written consent of Mitsui, AWE must not, and must ensure that its Related Bodies Corporate do not, directly or indirectly:
  - (1) negotiate or enter into or participate in negotiations or discussions with any Third Party; or
  - (2) communicate any intention to do any of these things, in relation to (or which may reasonably be expected to lead to) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by AWE or any of its Related Bodies Corporate, or that person has publicly announced the Competing Proposal.
- (b) Nothing in clause 9.3(a) prevents AWE from:
  - (1) making normal presentations to, or responding to enquiries from, brokers, proxy advisers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Offer, so long as such actions are not directed toward obtaining any Competing Proposal; or
  - (2) taking any actions necessary to respond to the CERCG Takeover Bid.

## 9.4 No due diligence

During the Exclusivity Period, except with the prior written consent of Mitsui, AWE must not, and must ensure that its Related Bodies Corporate do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage, or (subject to clause 9.7) facilitate or permit, any person (other than Mitsui) to undertake due diligence investigations in respect of AWE, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (b) subject to clause 9.7, make available to any person (other than Mitsui) or permit any such person to receive any non-public information relating to AWE, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

## 9.5 Notification of approaches

- (a) During the Exclusivity Period and subject to clause 9.7, AWE must promptly (and in any event, within 24 hours) notify Mitsui in writing of:
  - (1) any approach, inquiry or proposal made by any person to AWE or any of its Related Bodies Corporate to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
  - (2) any request made by any person to AWE or its Related Bodies Corporate, for any information relating to AWE, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) Subject to clause 9.7, a notice given under clause 9.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
  - (1) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 9.5(a)(1), or who made the relevant request for information referred to in clause 9.5(a)(2); and
  - (2) the material terms and conditions (including price, conditions precedent, timetable and break or reimbursement fee (if any)) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) During the Exclusivity Period, AWE must promptly provide Mitsui with:
  - (1) in the case of written materials, a copy of; or
  - (2) in any other case, a written statement of,

any non-public information relating to AWE, its Related Bodies Corporate, or any of their businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which differs materially from, or is more extensive than, the information which may have been provided to Mitsui or its Subsidiaries, or any of their respective Authorised Persons.
- (d) Nothing in this clause 9.5 prevents AWE from:
  - (1) providing information to its Related Persons;
  - (2) providing information to any Government Agency;
  - (3) providing information to its auditors, advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
  - (4) providing information required to be provided by law or any Government Agency; or
  - (5) making presentations to brokers, portfolio investors, analysts and other third parties,

in each case, in the ordinary course of business and without the purpose of circumventing the restrictions in this clause 9.





## 9.6 Matching right

- (a) If AWE is permitted by virtue of clause 9.7 to engage in activity that would otherwise breach any of clauses 9.3, 9.4(a), 9.4(b), 9.5(a) and 9.5(b), AWE must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 9.6(b) or 9.6(f)(2).
- (b) If AWE receives a Competing Proposal and as a result, any AWE Director proposes to either:
  - (1) change, withdraw or modify his or her recommendation of the Takeover Bid; or
  - (2) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 9.6(a)),

AWE must ensure that no AWE Director does so:
  - (3) unless the Competing Proposal is bona fide; and
  - (4) until each of the following has occurred:
    - (A) the AWE Directors have made the determination contemplated by clause 9.7(b) in respect of that Competing Proposal;
    - (B) AWE has given Mitsui written notice (**Relevant Notice**) of the AWE Board's proposal to take the action referred to in clauses 9.6(b)(1) or 9.6(b)(2) (subject to Mitsui's rights under clause 9.6(d));
    - (C) subject to clause 9.6(c), AWE has given Mitsui all information that would be required by clause 9.5(b) as if it was not subject in any way to clause 9.7;
    - (D) Mitsui's rights under clause 9.6(d) have been exhausted; and
    - (E) the AWE Directors have made the determination contemplated by clause 9.7(b) in respect of that Competing Proposal after Mitsui's rights under clause 9.6(d) have been exhausted and after evaluation of any Counter Proposal.
- (c) Prior to giving Mitsui the information under clause 9.6(b)(4)(C), AWE must advise the Rival Acquirer that the Rival Acquirer's name and other details which may identify the Rival Acquirer will be provided by AWE to Mitsui on a confidential basis.
- (d) If AWE gives a Relevant Notice to Mitsui under clause 9.6(b)(4)(B), Mitsui will have the right, but not the obligation, at any time during the period of 3 Business Days following the receipt of the Relevant Notice, to amend the terms of the Takeover Bid including increasing the amount of consideration offered under the Offer or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the AWE Directors must review the Counter Proposal in good faith. If the AWE Directors determine that the Counter Proposal would be more favourable, or at least no less favourable, to AWE and the AWE Shareholders than the Competing Proposal (having regard to the





matters noted in clause 9.7(b)), then AWE and Mitsui must use their best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and AWE must use its best endeavours to procure that the AWE Directors recommend the Counter Proposal to the AWE Shareholders and not recommend the applicable Competing Proposal.

- (e) For the purposes of this clause 9.5, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.
- (f) For the avoidance of doubt, in the event that Mitsui has not made a Counter Proposal by the expiry of the 3 Business Days referred to in clause 9.6(d), the AWE Board may:
  - (1) publicly change or withdraw its statement that they consider the Takeover Bid to be in the best interests of AWE Shareholders and/or its recommendation that AWE Shareholders accept the Offer; and
  - (2) enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party proposes to undertake or give effect to a Competing Proposal.

## 9.7 Fiduciary exception

The restrictions in clauses 9.3, 9.4(a) and 9.4(b) and the obligations in clauses 9.5(a) and 9.5(b) do not apply to the extent they restrict AWE or any AWE Director from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 9) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the AWE Board considers is of reputable commercial standing; and
- (b) the AWE Board has determined in good faith after:
  - (1) consultation with AWE's financial advisers, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
  - (2) receiving written advice from AWE's external Australian legal adviser practising in the area of corporate law, that failing to take the action or refuse to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the AWE Board.

## 10 Confidentiality

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### 10.1 Confidentiality Agreement

- (a) AWE releases Mitsui (and MEPAU) from:
  - (1) its confidentiality obligations owed to AWE under the Confidentiality Agreement to the extent necessary for Mitsui (and MEPAU) to make the Offer (including in relation to any of AWE's information required by applicable law to be included in the Bidder's Statement and any supplementary Bidder's Statement); and



- (2) its standstill obligations as set out in clause 8 of the Confidentiality Agreement.
- (b) Mitsui releases AWE from its confidentiality obligations owed to Mitsui under the Confidentiality Agreement to the extent necessary for AWE to respond to the Takeover Bid (including in relation to any of Mitsui's information required by law to be included in the Target's Statement and any supplementary Target's Statement).
- (c) Each party acknowledges and agrees that, except as provided for in clauses 10.1(a) and 10.1(b), it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party before or after the date of this deed.

## 10.2 Survival of obligations

Subject to clause 10.1, the parties acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this deed. Subject to clause 10.1, the rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed.

# 11 Representation and warranties

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## 11.1 Mitsui's representations and warranties

Mitsui represents and warrants to AWE (in its own right and separately as trustee or nominee for each of the other AWE Indemnified Parties) as at the date of this deed and on each day up to and including the last day of the Exclusivity Period that:

- (a) Mitsui is not aware of any circumstance, matter or thing that may cause or contribute to a breach of any of the Bid Conditions, or lead to such a breach with the effluxion of time;
- (b) Mitsui is a validly existing corporation registered under the laws of its place of incorporation;
- (c) the execution and delivery of this deed has been properly authorised by all necessary corporate action of Mitsui;
- (d) Mitsui has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (e) this deed is a valid and binding obligation of Mitsui, enforceable in accordance with its terms;
- (f) this deed does not conflict with or result in a breach of or default under:
  - (1) any provision of Mitsui's constitution; or
  - (2) any deed or any writ, order or injunction, rule or regulation to which Mitsui is a party or is bound,and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;
- (g) no Insolvency Event has occurred in relation to it or another substantial member of the Mitsui Group, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;



- (h) Mitsui does not require the approval of its shareholders or the approval or consent of any other person or Government Agency to enter into or perform any of its obligations under this deed; and
- (i) Mitsui has cash reserves and cash equivalents in place sufficient to pay the consideration under the Offer and to satisfy all of its other payment obligations under this deed as and when those payment obligations become due,  
(the **Mitsui Representations and Warranties**).

## 11.2 Mitsui's indemnity

Mitsui agrees with AWE (in its own right and separately as trustee or nominee for each of the other AWE Indemnified Parties) to indemnify and keep indemnified AWE and each of the AWE Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that AWE or any of the other AWE Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Mitsui Representations and Warranties.

## 11.3 AWE's representations and warranties

AWE represents and warrants to Mitsui (in its own right and separately as trustee or nominee for each of the other Mitsui Indemnified Parties) as at the date of this deed and on each day up to and including the last day of the Exclusivity Period that:

- (a) AWE is not aware of any circumstance, matter or thing that may cause or contribute to a breach of any of the Bid Conditions;
- (b) AWE is a validly existing corporation registered under the laws of its place of incorporation;
- (c) the execution and delivery of this deed by AWE has been properly authorised by all necessary corporate action;
- (d) AWE has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (e) this deed is a valid and binding obligation of AWE, enforceable in accordance with its terms;
- (f) this deed does not result in a breach of or default under:
  - (1) any provision of AWE's constitution; or
  - (2) any material term or provision of any material agreement (including any financing arrangements) or deed or any writ, order or injunction, rule or regulation to which AWE or any of its Subsidiaries is a party or to which they are bound (excluding any agreement, deed or regulation which contains a change of control provision);
- (g) as at the date of this deed, AWE is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Offer or as disclosed in writing to Mitsui on or before the date of this deed);
- (h) the issued capital of AWE as of the date of this deed is as set out in Schedule 4 and, other than as Fairly Disclosed to the Mitsui Group by AWE prior to the date of this deed, there are no other AWE options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into AWE Shares;



- (i) no Insolvency Event has occurred in relation to it or another substantial member of the AWE Group;
- (j) AWE financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as AWE is aware, there has not been any event, change, effect or development which would require AWE to restate its financial statements as disclosed to the ASX;
- (k) no member of the AWE Group has issued, or agreed to issue, any other securities or instruments which may convert into AWE Shares or any other securities in AWE;
- (l) as at the date of this deed, no member of the AWE Group, nor the assets, properties, or business of any member of the AWE Group, is subject to any judgment, order, writ, injunction or decree of any court, Government Agency, or arbitration tribunal, which would or is likely to result in a material adverse effect on its ability to fulfil its obligations under this deed, and so far as AWE is aware:
  - (1) there are no material actions, suits, arbitrations, legal or administrative proceedings pending against any member of the AWE Group which if successful, would or are likely to result in a material adverse effect on its ability to fulfil its obligations under this deed; and
  - (2) no member of the AWE Group is the subject of any pending investigation,  
which if progressed to its conclusion, would or is likely to result in a material adverse effect on its ability to fulfil its obligations under this deed;
- (m) no member of the AWE Group is a party to any agreement which may provide a counterparty with a right to acquire, or require AWE or a member of the AWE Group to dispose of, or offer to dispose of, any interest in the Key AWE Projects, as a consequence of the Takeover Bid or on a change in control of AWE; and
- (n) AWE is not aware of any matter or thing which;
  - (1) may result in licences L 1 or L 2 not being renewed, or
  - (2) may result in licences L 1 or L 2 being renewed on terms less favourable to AWE than the terms on which L 1 or L 2 were previously issued,

(the **AWE Representations and Warranties**).

## 11.4 AWE's indemnity

AWE agrees with Mitsui (in its own right and separately as trustee or nominee for each Mitsui Indemnified Party) to indemnify and keep indemnified Mitsui and each of the Mitsui Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Mitsui or any of the other Mitsui Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the AWE Representations and Warranties.

## 11.5 Notifications

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

## 11.6 Survival of representations and warranties

Each representation and warranty in made or given clauses 11.1 and 11.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

## 11.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 11.2 and 11.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

# 12 Termination

---

## 12.1 Termination for material breach

- (a) Either party may terminate this deed by written notice to the other party if at any time after the date on which the Takeover Bid is announced under clause 4 and before the end of the Offer Period:
  - (1) other than in respect of a breach of representation or warranty given by AWE or Mitsui under clause 11 (which are dealt with under clause 12.2), the other party has materially breached any of its material obligations under this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed and, to the extent that the breach is capable of remedy, that breach is not remedied by that other party within 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given; or
  - (2) a court or Government Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Takeover Bid, and the action is final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of a successful appeal or review.
- (b) Mitsui may terminate this deed by written notice to AWE at any time before the end of the Offer Period if any AWE Director fails to recommend the Takeover Bid or any AWE Director withdraws, adversely revises or adversely modifies his or her recommendation that AWE Shareholders accept the Offer or any AWE Director makes a public statement indicating that they no longer recommend the Takeover Bid or recommending, supporting or endorsing another transaction (including any Competing Proposal).



- (c) AWE may terminate this deed by written notice to Mitsui at any time before the end of the Offer Period if the AWE Board or a majority of the AWE Board has changed, withdrawn or modified its recommendation as permitted under clause 2.3.

## 12.2 Termination for breach of representations and warranties

- (a) Mitsui may, at any time before the end of the Offer Period, terminate this deed for a breach of a representation or warranty given by AWE under clause 11 only if:
  - (1) Mitsui has given written notice to AWE setting out the relevant circumstances and stating an intention to terminate the deed;
  - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given under clause 12.2(a)(1); and
  - (3) either:
    - (A) the breach was of a kind that, had it been disclosed to Mitsui prior to its entering into the deed, could reasonably be expected to have resulted in Mitsui either not entering into this deed or entering into it on materially different terms; or
    - (B) the breach amounts to, results in, or discloses anything that could reasonably be expected to result in a material adverse effect on AWE's ability to fulfil its obligations under this deed.
- (b) AWE may, at any time before the end of the Offer Period, terminate this deed for breach of a representation or warranty given by Mitsui under clause 11 only if:
  - (1) AWE has given written notice to Mitsui setting out the relevant circumstances and stating an intention to terminate the deed;
  - (2) the relevant breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice is given under clause 12.2(b)(1); and
  - (3) the breach was of a kind that, had it been disclosed to AWE prior to its entering into the deed, could reasonably be expected to have resulted in AWE either not entering into this deed or entering into it on materially different terms.

## 12.3 Effect of termination

If this deed is terminated by a party under this clause 12:

- (a) each party will be released from its obligations under this deed, except that this clause 12.3, clauses 3, 11.6, 11.7, 8, 12 and 15 (except clause 15.11) which will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

## 13 GST

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- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 13(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 13(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 13(b):
  - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this clause 13 has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).



## 14 Notices

### 14.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated below (or any alternative details nominated to the sending party by Notice).

Party	Address	Addressee	Fax	Email
<b>AWE</b>	Level 12, Suite 1201, 100 Pacific Highway North Sydney NSW 2060	Neville Kelly, Company Secretary	(02) 9460 0176	neville.kelly@wexplore.com
	Copy to: Allens, Deutsche Bank Place, Corner of Hunter and Phillip Streets, Sydney NSW 2000	Guy Alexander and Julian Donnan	(02) 9230 5333	Guy.Alexander@allens.com.au; Julian.Donnan@allens.com.au
<b>Mitsui</b>	1-3, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8631, Japan	Ken Togawa Director & General Manager, Mitsui E&P Australia Pty Ltd	(08) 6364 4778	Kensuke.Togawa@mepau.com.au
	Copy to Herbert Smith Freehills QV1 Building 250 St Georges Terrace Perth WA 6000 Australia	Simon Reed	(08) 9211 7878	Simon.Reed@hsf.com

### 14.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.





However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By fax to the nominated fax number	<p>At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety.</p> <p>However, if the recipient party informs the sending party within 8 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 8 hour period, only time within a business hours period is to be included.</p>
By email to the nominated email address	When the sender received an automated message confirming delivery, or two hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first.

### 14.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than fax and email as permitted in clause 14.2).

## 15 General

### 15.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.



## 15.2 No merger

The rights and obligations of the parties do not merge on completion of the Takeover Bid. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Takeover Bid

## 15.3 Duty, costs and expenses

- (a) Mitsui must pay all stamp duty (including any interest, fine or penalty) in respect of the execution, delivery and performance of this deed, save that for the avoidance of doubt, Mitsui shall not be liable for any stamp duty on the transactions referred to in relation to the Cash Share Rights referred to in clauses 2.5 and 2.6.
- (b) Except as otherwise provided in this deed, each party must pay its own legal costs and expenses in respect of the negotiation, preparation, execution, delivery and completion of this deed.

## 15.4 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction, the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 15.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 15.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

## 15.5 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

## 15.6 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 15.6 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.



Term	Meaning
<b>right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## 15.7 Variation

A variation of any term of this deed must be in writing and signed by the parties.

## 15.8 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.
- (b) A breach of clause 15.8(a) by a party shall be deemed to be a material breach for the purposes of clause 12.1(a)(1).
- (c) Clause 15.8(b) does not affect the construction of any other part of this deed.

## 15.9 Acknowledgement

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 9 and that Mitsui is entitled to seek and obtain without limitation injunctive relief if AWE breaches clause 9.

## 15.10 No third party beneficiary

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than the Mitsui Indemnified Parties and the AWE Indemnified Parties, any third party beneficiary rights.

## 15.11 Further action to be taken at each party's own expense

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

## 15.12 Entire agreement

This deed states all the express terms agreed by the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter (other than the Confidentiality Agreement).



### **15.13 Counterparts**

This deed may be executed in any number of counterparts which together will constitute one instrument. A party may execute this deed by signing any counterpart.

### **15.14 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

### **15.15 Remedies cumulative**

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

### **15.16 Exercise of rights**

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

## Schedules

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## Schedule 1

### Definitions and interpretation

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#### 1 Definitions

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Term	Meaning
<b>Adviser</b>	any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to AWE or Mitsui.
<b>Agreed Bid Terms</b>	the terms and conditions of the Offer set out in Schedule 2.
<b>Announcement Date</b>	has the meaning given to that term in the Bidder's Statement.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act as if subsection 12(1) of the Corporations Act included a reference to this deed and AWE was the designated body.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>AWE</b>	AWE Limited (ABN 70 077 897 440).
<b>AWE Board</b>	the board of directors of AWE and an ' <b>AWE Board Member</b> ' means any director of AWE comprising part of the AWE Board.
<b>AWE Director</b>	a director of AWE.
<b>AWE Group</b>	AWE and each of its Subsidiaries, and a reference to a <b>AWE Group Member</b> or a ' <b>member of AWE Group</b> ' is to AWE or any of its Subsidiaries.



Term	Meaning
<b>AWE Indemnified Parties</b>	AWE, its Subsidiaries and their respective Authorised Persons.
<b>AWE Representations and Warranties</b>	the representations and warranties of AWE set out in clause 11.3.
<b>AWE Share</b>	an ordinary share in the capital of AWE, including all shares on issue as at the end of the Offer Period.
<b>AWE Shareholder</b>	a registered holder of AWE Shares.
<b>Authorised Person</b>	in respect of a person: 1 a director, officer, partner, member or employee of the person; 2 an Adviser of the person; and 3 a director, officer or employee of an Adviser of the person.
<b>Bid Conditions</b>	the conditions to the Offer set out in clause 3 of Schedule 2 of the Agreed Bid Terms.
<b>Bidder's Statement</b>	the bidder's statement to be prepared by Mitsui in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.
<b>Business Day</b>	a day on which banks are open for business in Perth, Western Australia or Sydney, New South Wales, excluding a Saturday, Sunday or public holiday.
<b>Cash Share Rights</b>	the cash share rights issued under the AWE Limited Employee Cash Share Plan, being up to 8,486,352 such rights .
<b>Cash Share Rights Holders</b>	the holders of Cash Share Rights.
<b>Casino Project</b>	means the area subject to production licences VIC/L24 and VIC/L30.





Term	Meaning
<b>CERCG Takeover Bid</b>	the takeover bid announced by CERCG Aus Gas Pty Limited (ACN 622 835 894) for 100% of the AWE Shares on 25 January 2018.
<b>Claim</b>	<p>any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none"><li>1 based in contract (including breach of any warranty);</li><li>2 based in tort (including misrepresentation or negligence);</li><li>3 under common law or equity; or</li><li>4 under statute (including the Australian Consumer Law (being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (<b>CCA</b>)) or Part VI of the CCA, or like provisions in any state or territory legislation),</li></ol> <p>in any way relating to this deed or the transactions contemplated by it, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.</p>
<b>Competing Proposal</b>	<p>any proposal, agreement, arrangement or transaction, which, if entered into or completed substantially in accordance with its terms, a Third Party (either alone or together with any Associate) would directly or indirectly:</p> <ol style="list-style-type: none"><li>1 acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 15% or more of the AWE Shares;</li><li>2 acquire Control of AWE or any material Subsidiary of AWE;</li><li>3 acquire or become the holder of, or otherwise acquire or have a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of AWE's business or assets or the business or assets of the AWE Group;</li><li>4 otherwise acquire or merge with AWE or a material Subsidiary of AWE; or</li><li>5 require Mitsui to terminate this deed or abandon, or otherwise fail to proceed with making the Takeover Bid, or fail to obtain Control of AWE,</li></ol> <p>whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.</p>
<b>Confidentiality Agreement</b>	the confidentiality agreement dated 15 August 2017 between MEPAU and AWE.



Term	Meaning
<b>Control</b>	has the meaning given in section 50AA of the Corporations Act.
<b>Control Date</b>	means the date on which the Mitsui acquires a Relevant Interest in 50.1% or more of all AWE Share on issue.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Counter Proposal</b>	has the meaning given to that term in clause 9.6(d).
<b>CSR Grant 2017</b>	the 7,535,022 entitlements to Cash Share Rights approved by the AWE Board prior to the date of this deed pursuant to the AWE Limited Employee Cash Share Plan (but not yet issued).
<b>Exclusivity Period</b>	<p>the period from and including the date of this deed until the earlier of:</p> <ol style="list-style-type: none"><li>1 the date of termination of this deed;</li><li>2 the end of the Offer Period; and</li><li>3 the date that is 6 months after the date of this deed.</li></ol>
<b>Fairly Disclosed</b>	a reference to 'Fairly Disclosed' means disclosed to the Mitsui Group or any of the Mitsui Group's Related Persons, to the extent that, and in sufficient detail so as to enable, a reasonable bidder (or one of its Related Persons) experienced in transactions similar to the Takeover Bid and experienced in a business similar to any business conducted by AWE Group, to identify the nature and scope of the relevant matter, event or circumstance.
<b>Government Agency</b>	any foreign or Australian government or government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity or any minister of the Crown in right of the Commonwealth of Australia or any state, and any other federal, state, provincial, or local government, whether foreign or Australian, and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.
<b>Independent Expert</b>	the independent expert in respect of the Takeover Bid appointed by AWE, being Grant Thornton Corporate Finance Pty Ltd.
<b>Independent Expert's Report</b>	the independent expert's report prepared by the Independent Expert (and including any update of that report by the Independent



Term	Meaning
	Expert).
<b>Insolvency Event</b>	<p>means, in relation to an entity:</p> <ol style="list-style-type: none"><li>1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days);</li><li>2 a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;</li><li>3 the entity executing a deed of company arrangement;</li><li>4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</li><li>5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act; or</li><li>6 the entity being deregistered as a company or otherwise dissolved.</li></ol>
<b>Key AWE Projects</b>	<p>the AWE Group's interests in:</p> <ol style="list-style-type: none"><li>1 the Waitsia Project;</li><li>2 the project that produces gas and other petroleum products from the area subject to the production licence T1/L Yolla, known as the BassGas Project;</li><li>3 the Casino Project; and</li><li>4 the project that produces oil from the area that is the subject of the Northwest Natuna production sharing contract (offshore Indonesia in the Northwest Natuna Sea), known as the Ande Ande Lumut Project.</li></ol>
<b>L1</b>	petroleum licence L1 granted under the <i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA).
<b>L2</b>	petroleum licence L2 granted under the <i>Petroleum and Geothermal Energy Resources Act 1967</i> (WA).
<b>Listing Rules</b>	the official listing rules of ASX, as amended and waived by ASX from time to time.



Term	Meaning
<b>Material Contract</b>	a contract which: <ol style="list-style-type: none"><li>1 is a Material Gas Sales Agreement;</li><li>2 is material to the conduct of the AWE Group's business as a whole; or</li><li>3 involves aggregate expenditure greater than \$25 million, annual revenue greater than \$10 million, or has a committed term which is greater than 3 years.</li></ol>
<b>Material Gas Sales Agreement</b>	an agreement (including by way of amendment to any existing agreement) for the sale, pre-sale, lending, offtake, exchange or disposal by other means of hydrocarbons in relation to the current or future production from any of the Key AWE Projects.
<b>MEPAU</b>	Mitsui E&P Australia Pty Ltd (ABN: 45 108 437 529).
<b>MinRes</b>	Mineral Resources Limited (ABN 33 118 549 910).
<b>MinRes SID</b>	the Scheme Implementation Deed entered into between AWE and MinRes dated 21 December 2017.
<b>Mitsui</b>	Mitsui & Co., Ltd. (ABN 88 001 855 465).
<b>Mitsui Board</b>	The board of directors of Mitsui
<b>Mitsui Group</b>	Mitsui and each of its Subsidiaries, and a reference to a ' <b>Mitsui Group Member</b> ' or a ' <b>member of the Mitsui Group</b> ' is to Mitsui or any of its Subsidiaries.
<b>Mitsui Indemnified Party</b>	Mitsui, its Subsidiaries and their respective directors, officers and employees.
<b>Mitsui Representations and Warranties</b>	the representations and warranties of Mitsui set out in clause 11.1.
<b>Offer</b>	has the meaning given in clause 2.1(a).
<b>Offer Period</b>	the period that the Offer is open for acceptance.



Term	Meaning
<b>Record Date</b>	the date set by Mitsui pursuant to section 633(2) of the Corporations Act.
<b>Reimbursement Fee</b>	A\$6,000,000
<b>Related Body Corporate</b>	has the meaning given in section 50 of the Corporations Act.
<b>Related Person</b>	<ol style="list-style-type: none"><li>1 in respect of a party or its Related Bodies Corporate, each director, officer, employee, adviser, agent or representative of that party or Related Body Corporate; and</li><li>2 in respect of any financial adviser retained by a party in relation to the transactions contemplated by this deed, each director, officer, employee or contractor of that financial adviser.</li></ol>
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>Subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
<b>Superior Proposal</b>	<p>a bona fide Competing Proposal of the kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal (and not resulting from a breach by AWE of any of its obligations under clause 9 of this deed) which the AWE Board, acting in good faith, and after receiving written legal advice from its legal adviser and written advice from its financial adviser, determines:</p> <ol style="list-style-type: none"><li>1 is reasonably capable of being valued and completed in a timely fashion taking into account all aspects of the Competing Proposal including any timing considerations, any conditions precedent and the identity of the proponent; and</li><li>2 would, if completed substantially in accordance with its terms, be more favourable to AWE Shareholders (as a whole) than the Takeover Bid, taking into account all terms and conditions of the Competing Proposal.</li></ol>
<b>Takeover Bid</b>	a takeover bid by Mitsui for the AWE Shares that satisfies the requirements in clause 2.
<b>Target's Statement</b>	AWE's statement to be prepared by AWE in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.



Term	Meaning
<b>Third Party</b>	a person other than Mitsui and its Associates.
<b>Timetable</b>	the timetable set out in Schedule 3.
<b>Unacceptable Circumstances</b>	has the meaning set out in section 657A of the Corporations Act.
<b>Waitsia Project</b>	the project for the exploration for, development of and exploitation of natural gas from the area subject to production licences L 1 and L 2, known as the Waitsia Project.

## 2 Interpretation

### 2.1 General

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;



- (k) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (l) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (n) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (p) a reference to any time, unless otherwise indicated, is to the time in Sydney, New South Wales, Australia;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (s) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (t) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause Schedule 1, has the same meaning when used in this deed; and

## **2.2 Interpretation of inclusive expressions**

Specifying anything in this deed after the words 'including', 'includes', 'for example' or similar expression does not limit what else is included unless there is express wording to the contrary.

## **2.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.



## Schedule 2

### Agreed Bid Terms

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#### 1 Consideration

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The consideration under the Offer is A\$0.95 cash for each AWE Share.

#### 2 Offer Period

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The initial Offer Period shall last for at least one month and shall be subject to Mitsui's right to extend the period in accordance with the Corporations Act.

#### 3 Bid Conditions

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##### 3.1 No regulatory action

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (a) there is not in effect any preliminary or final decision, order or decree issued by any public authority;
- (b) no action or investigation is announced, commenced or threatened by any public authority; and
- (c) no application is made to any public authority (other than by Mitsui or any associate of Mitsui),

in consequence of or in connection with the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibits or materially impedes, or threatens to restrain, prohibit or materially impede, or materially impact upon, the making of the Offers and the completion of any transaction contemplated by this deed or which requires the divestiture by Mitsui of any AWE Shares or any material assets of AWE or any subsidiary of AWE.

##### 3.2 Minimum acceptance

At the end of the Offer Period, Mitsui has relevant interests in at least 50.1% of the AWE Shares (on a fully diluted basis).

##### 3.3 No material adverse change

- (a) Subject to clause 3.3(b), between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occurs:

- (1) an event, change, condition, matter or thing occurs or will or is reasonably likely to occur;
- (2) information is disclosed or announced by AWE concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur; or
- (3) information concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur becomes known to Mitsui (whether or not becoming public),

(each of (1), (2) and (3), a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have:

- (4) a material adverse effect on the business, assets, liabilities or financial or trading position of the AWE Group taken as a whole (which for this purposes includes the receipt by any member of the AWE Group of any formal notice from a Government Agency that licences L 1 and L 2 will not be renewed or are revoked);
- (5) the effect of a diminution in the value of the consolidated net assets of the AWE Group, taken as a whole, by at least \$25 million against what it would reasonably have been expected to have been but for such Specified Event;
- (6) the effect of a diminution in the consolidated earnings before interest and tax of the AWE Group, taken as a whole, by at least \$25 million in any financial year for the AWE Group against what they would reasonably have been expected to have been but for such Specified Event; or
- (7) the effect of incurring any obligations, liabilities, accounting impairment, costs or expenses (whether contingent or otherwise) where the quantum (whether individually or aggregated) exceeds \$25 million.

(b) Clause 3.3(a) will not apply to events, occurrences or matters that:

- (1) have been disclosed by AWE in its public filings with the ASX or ASIC before the Announcement Date;
- (2) are required to be done or procured by AWE to be done pursuant to this deed or the Offer or the transactions contemplated by either;
- (3) are Fairly Disclosed to the Mitsui Group in writing prior to the date of this deed;
- (4) relate to costs or expenses incurred by AWE associated with the Offer process, including all fees payable to external advisers of AWE;
- (5) relate to an event, occurrence or matter comprising or resulting from a change in any applicable law, any accounting standards, general or political conditions (including changes in interest rates, foreign exchange rates and changes in oil and gas and other commodity prices) or financial markets, whether in Australia or elsewhere;
- (6) result from the effect of mark-to-market movements relating to financial derivatives entered into in respect of interest bearing liabilities and foreign exchange rates (including the impacts of those movements on reported earnings); or
- (7) Mitsui has previously approved in writing.



### 3.4 No prescribed occurrences

Between the Announcement Date and the date 3 Business Days after the end of the Offer Period (each inclusive), none of the following prescribed occurrences happen:

- (a) AWE converting all or any of the AWE Shares into a larger or smaller number of shares under section 254H of the Corporations Act;
- (b) AWE or a Subsidiary of AWE resolving to reduce its share capital in any way;
- (c) AWE or a Subsidiary of AWE entering into a buyback agreement or resolving to approve the terms of a buyback agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) AWE or a Subsidiary of AWE making an issue of AWE Shares (other than AWE Shares issued as a result of the exercise of Cash Share Rights into AWE Shares) or granting an option over the AWE Shares or agreeing to make such an issue or grant such an option;
- (e) AWE or a Subsidiary of AWE issuing, or agreeing to issue, convertible notes;
- (f) AWE or a Subsidiary of AWE disposing or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (g) AWE or a Subsidiary of AWE granting, or agreeing to grant, a security interest in the whole, or a substantial part, of its business or property, other than:
  - (1) any security interest required in connection with AWE's debt facilities which has been Fairly Disclosed to ASX or Mitsui in writing prior to the date of this deed;
  - (2) any security interest granted in favour of AWE or another member of the AWE Group;
  - (3) a lien which arises by operation of law or legislation securing an obligation that is not yet due; or
  - (4) in the usual and ordinary course of business consistent with past practice;
- (h) AWE or a Subsidiary of AWE resolving that it be wound up;
- (i) the appointment of a liquidator or provisional liquidator of AWE or of a Subsidiary of AWE;
- (j) the making of an order by a court for the winding up of AWE or of a Subsidiary of AWE;
- (k) an administrator of AWE or of a Subsidiary of AWE being appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) AWE or a Subsidiary of AWE executing a deed of company arrangement;
- (m) the appointment of a receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official in relation to the whole, or a substantial part, of the property of AWE or of a Subsidiary of AWE; or
- (n) AWE does not announce, make, declare or pay any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie),

provided that a prescribed occurrence will not include any matter:



- (o) disclosed by AWE in its public filings with the ASX or ASIC before the date of this deed;
- (p) required to be done or procured by AWE to be done pursuant to this deed or the Offer or the transactions contemplated by either;
- (q) Fairly Disclosed to the Mitsui Group in writing prior to the date of this deed;
- (r) in relation to the deregistration or winding up of dormant entities in the AWE Group;
- (s) required by law or by an order of a court or Government Agency;
- (t) expressly permitted pursuant to this deed; or
- (u) the undertaking of which Mitsui has previously approved in writing (which approval must not be unreasonably withheld or delayed).

### **3.5 No material breach of the Bid Implementation Deed**

Between the Announcement Date and the end of the Offer Period (each inclusive), Mitsui does not become entitled to terminate the Bid Implementation Deed under clause 12.1(a)(1) or 12.2(a) of that deed, as a result of a breach by AWE of clause 6.3 (Prohibited actions) or clause 11.3 (AWE's representations and warranties) of that deed.

## Schedule 3

### Timetable

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Event	Date
<ul style="list-style-type: none"><li>• Mitsui announces Takeover Bid</li><li>• AWE announces Takeover Bid</li></ul>	Monday 5 February 2018
<ul style="list-style-type: none"><li>• Mitsui lodges Bidder's Statement with ASIC and serves it on AWE and ASX</li></ul>	Friday 9 February 2018
<ul style="list-style-type: none"><li>• Commencement and completion of dispatch of Bidder's Statement to Shareholders</li><li>• Offer Period commences</li></ul>	Monday 12 February 2018
<ul style="list-style-type: none"><li>• AWE lodges Target's Statement with ASIC and serves it on Mitsui and ASX</li></ul>	Tuesday 27 February 2018
<ul style="list-style-type: none"><li>• Completion of dispatch of Target's Statement to Shareholders</li></ul>	Tuesday 27 February 2018
<ul style="list-style-type: none"><li>• Offer Period ends (unless extended)</li></ul>	Tuesday 20 March 2018



## Schedule 4

### AWE's capital structure

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AWE has 625,253,903 fully paid ordinary shares on issue.

AWE has 8,486,352 Cash Share Rights.

## Schedule 5

### AWE Directors' interests

Director	Interests held
David Ian McEvoy	33,703 AWE Shares
Kenneth Graham Williams	83,703 AWE Shares
Raymond James Betros	73,703 AWE Shares
Karen Lee Collett Penrose	53,703 AWE Shares
David Arthur John Biggs	13,703 AWE Shares 920,282 Cash Share Rights vesting on 30 June 2019 1,258,992 Cash Share Rights vesting on 30 June 2020
Andrew John Rigg	13,950 AWE Shares



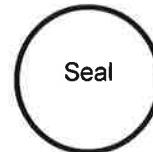


## Signing page

Executed as a deed

**Mitsui & Co., Ltd.**

Signed sealed and delivered for  
**Mitsui & Co., Ltd.**  
by its attorney



in the presence of

sign here ►   
Attorney

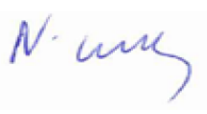
print name Toru Matsui

sign here ►   
Witness


print name Haruaki Moritani

**AWE Limited**

Signed sealed and delivered by  
**AWE Limited**  
by

sign here ►   
Company Secretary/Director

print name NEVILLE KELLY

sign here ►   
Director

print name DAVID BIGGS