

ASX Announcement

28 August 2023

Energy One receives proposal and grants due diligence on an exclusive basis

Energy One Limited ("Energy One" or "the Company") today announces that it has received a confidential, indicative, incomplete, conditional and non-binding proposal (the "Indicative Proposal") from a global investment firm, STG. STG has nearly US\$10 billion of assets under management and a portfolio that includes software and software-enabled services companies. The Indicative Proposal is to acquire all of the issued shares in Energy One at an indicative price of A\$5.85 cash per share by way of a scheme of arrangement ("Potential Transaction"). Energy One has also entered into an exclusivity deed granting STG with an expedited period of exclusivity to allow STG to complete confirmatory due diligence.

Background

Earlier this year, following interest and the receipt of a confidential, indicative, incomplete, conditional, non-binding proposal as well as several other unsolicited expressions of interest, Energy One decided to engage with a small number of parties regarding their interest in the business to determine whether any approach would appropriately value the Company and maximise shareholder value.

During this period of engagement, select parties were provided with access to management and comprehensive information. STG participated in this process and the Indicative Proposal is based on the extensive due diligence that they have conducted to date.

Indicative Proposal

The Board believes the Indicative Proposal, if formalised into a binding offer, represents compelling value to shareholders as it represents:

- a ~44% premium to Energy One's undisturbed closing price of A\$4.05 on 25 August 2023; and
- a ~43% premium to the 1 month volume weighted average price of Energy One's shares prior to 25 August 2023 of A\$4.09
- a ~76% premium to the 3 month volume weighted average price of Energy One's shares prior to 25 August 2023 of A\$3.33

The Indicative Proposal is conditional on completion of confirmatory due diligence, execution of a binding scheme implementation deed and standard final internal approvals from STG's Investment Committee and the Board of Energy One. If STG makes a binding offer the Potential Transaction will also be subject to customary conditions for a scheme of arrangement, including Energy One shareholder and court approval as well as foreign investment approvals in Australia and the United Kingdom.

Following careful consideration, and consultation with its advisers, the Board determined that it was in the best interests of Energy One shareholders as a whole, to grant STG an expedited period of exclusivity to enable STG to complete its confirmatory due diligence. The exclusivity deed is attached in Appendix A of this document.

Head Office

Level 13, 77 Pacific Highway
North Sydney NSW 2060

Postal Address

PO Box 6400
North Sydney NSW 2059

Contact Information

Telephone: + 61 2 8917 2200
Email: enquiries@energyone.com
Website: www.energyone.com

If STG provides a binding proposal on terms no less favourable than those in the Indicative Proposal and subject to entry into a binding scheme implementation deed in a form acceptable to the Company, the Board of the Company (other than Mr Vaughan Busby) intends to recommend that Energy One shareholders vote in favour of the Potential Transaction and to vote or procure any Energy One shares they own or control be voted in favour of the Potential Transaction, in the absence of a superior proposal and subject to an independent expert concluding, and continuing to conclude, that the Potential Transaction is in the best interests of Energy One shareholders.

Energy One notes there is no certainty that the parties will enter into binding documentation or a transaction of any kind will materialise.

Energy One shareholders do not need to take any action at this time. Energy One will continue to keep the market informed of any material developments, in accordance with its continuous disclosure obligations.

Rothschild & Co is acting as financial adviser and Gilbert + Tobin as legal adviser to Energy One, in connection with the Potential Transaction.

Andrew Bonwick
Chairman

For further information please contact:

Andrew Bonwick
Chairman

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This announcement was authorised for release by the Board of Energy One Limited.

About Energy One

With offices in Australia, UK and Europe and with some 50% of the energy traded in the Australian market, Energy One is the premier supplier of software and services to the wholesale energy market in Australia and a leading supplier to European wholesale markets and customers.

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Appendix A

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Exclusivity deed

Energy One Limited

STG Partners LLC

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Date: 28 August 2023

Parties

- 1 **Energy One Limited (ACN 076 583 018)** of Level 13, 77 Pacific Highway, North Sydney NSW 2060 (**EOL**)
 - 2 **STG Partners, LLC** of 1300 El Camino Real, Ste. 300, Menlo Park, California 94025 (the **Counterparty**)
-

Background

- A. The Counterparty has submitted a confidential, non-binding, incomplete and indicative proposal dated 10 August 2023 (**NBIO**) for the acquisition of 100% of the issued shares in EOL by way of a scheme of arrangement (**Proposed Transaction**).
- B. To assist the Counterparty to complete its confirmatory diligence investigations as a precursor to finalising terms for the Proposed Transaction, the parties propose to enter into the exclusivity and other arrangements set out in this deed.

The parties agree:

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

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

1.2 Interpretation

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

2 Exclusivity

2.1 No existing discussions

EOL represents and warrants to the Counterparty that, as at the date of this deed neither EOL nor any of its Representatives, is in any negotiations or discussions, and have ceased any existing negotiations or discussions, with any person in relation to, or that may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal (other than, for the avoidance of doubt, the discussions with the Counterparty and its Representatives in respect of the Proposed Transaction).

2.2 No-shop restriction

During the Exclusivity Period, EOL must ensure that neither it nor any of its Representatives directly or indirectly solicits, invites, facilitates, encourages or initiates

any approaches, enquiries, expressions of interest, offers, proposals, negotiations or discussions in relation to, or that may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal (or which may otherwise lead to the Proposed Transaction not being completed), or communicate to any person any intention to do any of the foregoing.

2.3 No-talk restriction

Subject to clause 2.5, during the Exclusivity Period, EOL must ensure that neither it nor any of its Representatives, directly or indirectly, negotiates or enters into, continues or participates in any negotiations or discussions with, or enters into any agreement, arrangement or understanding with, any other person in relation to, or that may reasonably be expected to encourage or lead to, a Competing Proposal (or which may otherwise lead to the Proposed Transaction not being completed), even if that person's Competing Proposal was not directly or indirectly solicited, invited, facilitated, initiated, or encouraged by EOL or any of its Representatives or the person has publicly announced the Competing Proposal, or communicate to any person any intention to do any of the foregoing.

2.4 No due diligence restriction

Subject to clause 2.5, during the Exclusivity Period, EOL:

- (a) must ensure that neither it, nor its Representatives, directly or indirectly make available to any person (other than the Counterparty and its Representatives), or permit any person to receive, any non-public information relating to EOL, any member of the EOL Group or its business or its operations which could reasonably be expected to encourage or lead such person to formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; and
- (b) agrees not to waive, and to enforce, any standstill obligations with third parties and any confidentiality obligations owed by third parties to EOL.

2.5 Fiduciary out

- (a) Each of clauses 2.3 (*No-talk restriction*) and 2.4 (*No due diligence restriction*) do not apply after the Hard Exclusivity Period to the extent that the relevant clause restricts EOL or its Representatives from taking or refusing to take any action with respect to an actual, proposed or potential bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, encouraged or initiated by EOL or its Representatives in breach of clause 2.2) if the Board has determined, acting in good faith:
 - (i) after consultation with its financial adviser, that the Competing Proposal is or may reasonably be expected to become a Superior Proposal; and
 - (ii) after receiving written advice from EOL's external legal adviser (with experience in advising on Australian public M&A transactions) that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would, or would be reasonably likely to constitute, a breach of the fiduciary or statutory duties of any director of EOL,

and provided that EOL promptly notifies the Counterparty if it makes such a determination.

- (b) For the avoidance of doubt, the evaluation of a Competing Proposal for the purposes of this clause 2.5 is not a breach of this clause 2.

2.6 Notice of Competing Proposals

- (a) During the Exclusivity Period, EOL must promptly (and, in any event, within 24 hours) notify the Counterparty in writing of any:
 - (i) approach, inquiry or proposal made by any person to it or any of its Representatives in relation to an actual, proposed or potential Competing Proposal (including, for the avoidance of doubt, any request or proposal to which clauses 2.3, 2.4 and/or 2.5 may apply), and as part of that notification will provide all material details of the approach (including the price (or if not cash, implied value), form of consideration, conditions precedent, timing, break fee provisions (if any) and other key terms of any Competing Proposal and the identity of the proponent(s) of any such proposal) in each case to the extent known by EOL and provided that EOL may withhold or redact any information relating to the proponent(s) of the Competing Proposal which is commercially sensitive to that person, EOL must provide as much detail about the relevant information as is reasonably possible without disclosing the commercially sensitive information; and
 - (ii) request for information relating to EOL, or its businesses or operations, in connection with the formulation, development or finalisation of, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal, or which EOL has reasonable grounds to suspect may relate to an actual, proposed or potential Competing Proposal, and must disclose to the Counterparty the identity of the party making the request and details of the request.
- (b) During the Exclusivity Period, EOL must also promptly (and in any event, within 24 hours) notify the Counterparty in writing after becoming aware of any material developments in relation to any actual, proposed or potential Competing Proposal, including in respect of any of the information previously notified to the Counterparty under clause 2.6(a).

2.7 Non-public information

- (a) If any Non-public Information is provided or made available to any person in connection with an actual, proposed or potential Competing Proposal which has not previously been provided or made available to the Counterparty, EOL must promptly, and in any event within 24 hours, provide to the Counterparty:
 - (i) In the case of written materials, a copy of; and
 - (ii) in any other case, a written statement of,that Non-public Information.
- (b) If EOL is permitted by virtue of clause 2.5 to engage in any activity that would otherwise breach any of clauses 2.3 or 2.4, EOL must enter into a confidentiality agreement with the person who has made the applicable actual, proposed or potential Competing Proposal that contains obligations on that person that are, when assessed on an overall basis, on terms no less onerous in any material respect than the obligations of the Counterparty under the Confidentiality Agreement.

2.8 Matching Right

If EOL receives a Competing Proposal during the Exclusivity Period, EOL:

- (a) must not, and must procure that each of its Representatives do not, enter into any agreement, understanding or commitment in respect of that Competing Proposal (other than a confidentiality agreement contemplated by clause 2.7(b)); and
- (b) must use its reasonable endeavours to ensure that none of the EOL Directors publicly recommend a Competing Proposal (or recommend against the Proposed Transaction) or make any public statement to the effect that they may do so at a future point,

unless each of the following conditions have been satisfied:

- (c) the Board determines that the Competing Proposal constitutes a Superior Proposal;
- (d) EOL has provided the Counterparty with the material terms and conditions of the Competing Proposal, including price (or implied value), consideration, conditions precedent, timing, break fee provisions (if any) and the identity of the third party making the Competing Proposal, in each case to the extent known by EOL;
- (e) EOL gives the Counterparty until the Cut Off Date to provide a Counterproposal to the terms of the Competing Proposal;
- (f) either:
 - (i) the Counterparty has not announced or otherwise formally proposed to EOL (in writing) a revised proposal (**Counterproposal**) before the Cut Off Date; or
 - (ii) the Counterparty has announced or otherwise formally proposed to EOL (in writing) a Counterproposal before the Cut Off Date and the Board has determined, in good faith, that the Counterproposal would not provide an equivalent or superior outcome to EOL Shareholders as a whole compared with the Competing Proposal and in making that determination, the Board can consider the likelihood of whether the Counterproposal is likely to lead to a binding proposal at its price.
- (g) Each successive modification of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under this clause 2.8.

2.9 Matching or superior Counterparty proposal

If, in accordance with clause 2.8(f)(ii), the Counterparty formally proposed to EOL a Counterproposal before the Cut Off Date, EOL must procure that the Board considers the Counterproposal and determines whether, in good faith, the Counterproposal would provide an equivalent or superior outcome to EOL Shareholders as a whole compared with the Competing Proposal and in making this determination, the Board can consider the likelihood of whether the Counterproposal is likely to lead to a binding proposal at its price. Following that determination, EOL must:

- (a) procure that the Board promptly, and in any event within 2 Business Days, notifies the Counterparty of the determination in writing, stating reasons for that determination; and

- (b) if the determination is that the Counterproposal would provide an equivalent or superior outcome to EOL Shareholders as a whole compared with the Competing Proposal, then for a period of 3 Business Days after EOL delivers to the Counterparty the notice referred to in clause 2.9(a):
 - (i) EOL must not provide any due diligence information to the person making the Competing Proposal (or to their Representatives); and
 - (ii) EOL and the Counterparty must use their best endeavours to agree:
 - (A) amendments to this deed and any other transaction documentation that is reasonably necessary to reflect the Counterproposal; and
 - (B) the transaction documentation required to implement the Counterproposal,
- as soon as reasonably practicable.

2.10 Usual provision of information

Nothing in this deed prevents EOL from:

- (a) providing any information to its Representatives;
- (b) providing any information to any Government Agency;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the ASX Listing Rules or to any Government Agency;
- (d) providing any information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business; and
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers, in the ordinary course of business (provided that such action does not result in a breach of clause 2.2).

3 Due Diligence

3.1 Due Diligence Access

During the term of this deed, EOL must in a prompt and timely manner:

- (a) provide the due diligence information requested by the Counterparty before the date of this deed, and provide all other due diligence information and materials reasonably requested by the Counterparty for the purposes of discussing, assessing, negotiating or implementing the Proposed Transaction;
- (b) allow the Counterparty reasonable access to relevant management and personnel of the EOL Group; and
- (c) provide reasonable assistance to the Counterparty and its Representatives to enable them to conduct due diligence enquiries.

3.2 Commitment to progress due diligence

- (a) The Company must use reasonable endeavours to complete its confirmatory due diligence investigations before the Exclusivity Deadline.
 - (b) During the Exclusivity Period, the Counterparty must provide weekly (verbally or in writing) updates to EOL on its progress in respect of its confirmatory due diligence investigations.
 - (c) If, during the Exclusivity Period, the Counterparty decides to no longer progress the Proposed Transaction, it must promptly notify EOL in writing.
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4 Scheme Implementation Deed

4.1 Announcement

- (a) Each of EOL and the Counterparty acknowledge and agree that upon the signing of this deed by each party, EOL will make an announcement to the Australian Securities Exchange (**ASX**) in an agreed form with respect to the status of the Proposed Transaction and setting out the material terms of the NBIO and attaching this deed (in each case, with details of the Counterparty and its Representatives redacted).
- (b) The obligation to make the announcement in clause 4.1(a) does not in any way restrict EOL from complying with its obligation to make any disclosure required by law or the ASX Listing Rules.

4.2 Intention to recommend

EOL represents and warrants that, as at the date of this deed, all of the directors of EOL other than Vaughan Busby have confirmed that they intend, upon entry into the Scheme Implementation Deed on terms that are acceptable to EOL and are no less favourable to EOL and/or EOL Shareholders than those set out in the NBIO, to:

- (a) recommend to EOL Shareholders to vote; and
- (b) vote or procure that any shares in the Company in which they have a Relevant Interest are voted,

in favour of the Proposed Transaction, in the absence of a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the Proposed Transaction is in the best interests of EOL Shareholders.

4.3 Reasonable endeavours

- (a) The parties agree, subject to the terms of this deed, to negotiate in good faith and to use all reasonable endeavours to work together to seek to agree the Scheme Implementation Deed to give effect to a binding offer by the Counterparty (or an entity owned, controlled or advised by the Counterparty) for all of the issued share capital in EOL based on the terms of the Proposed Transaction by the end of the Exclusivity Period, subject to the confirmatory due diligence being to the Counterparty's complete satisfaction and provided nothing in this deed obliges either EOL or the Counterparty to enter into the scheme implementation deed.

- (b) EOL will provide to the Counterparty a first draft of the Scheme Implementation Deed as soon as practicable and, in any event, within 3 Business Days of the date of this deed.

5 Confidentiality

The parties acknowledge and agree they are bound by the terms of the Confidentiality Agreement.

6 Termination

This deed will automatically terminate upon the earliest of the following to occur:

- (a) the Exclusivity Deadline; and
 - (b) the entry by the parties into the Scheme Implementation Deed; and
 - (c) either party giving written notice to the other party of termination with immediate effect after a notification from the Counterparty under clause 3.2(c).
-

7 General

7.1 Assignment, novation and other dealings

A party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of each other party which consent may be withheld at the absolute discretion of that party.

7.2 Consents and approvals

Except as expressly provided in this deed, a party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this deed.

7.3 Counterparts

This deed may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

7.4 Costs, expenses and duties

Except as expressly provided in this deed each party must pay its own costs and expenses of negotiating, preparing and executing this deed and any other instrument executed under this deed.

7.5 Cumulative rights

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

7.6 Entire agreement

- (a) This deed is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

- (b) Each party represents and warrants that it has not relied on any representations or warranties about the subject matter of this deed except as expressly provided in this deed.

7.7 Governing law and jurisdiction

This deed is governed by the laws of New South Wales and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

7.8 Notices

- (a) A notice, consent or other communication under this deed is only effective if it is:
 - (i) in writing and in legible English, signed by or on behalf of the party giving it;
 - (ii) addressed to the party to whom it is to be given; and
 - (iii) either:
 - (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address; or
 - (B) sent by email to that party's email address,in each case, as recorded in clause 7.8(d).
- (b) Subject to clause 7.8(c) a notice, consent or other communication under this deed is, in the absence of earlier receipt, regarded as given and received:
 - (i) if it is delivered, on delivery at the address of the relevant party;
 - (ii) if it is sent by mail, on the 3rd Business Day after the day of posting, or if to or from a place outside Australia, on the 7th Business Day after the day of posting; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered).
- (c) If a notice, consent or other communication under this deed is given and received on a day that is not a Business Day or after 5.00 pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.
- (d) For the purposes of this clause 7.8, a party's address and email are those set out below, unless the party has notified a changed address or email, then the notice, consent, approval or other communication must be to that address or email:

EOL

Address
Email
Attention

the Counterparty

Address

Email
Attention

With a copy to:

7.9 Relationship of the parties

Except as expressly provided in this deed:

- (a) nothing in this deed is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- (b) no party has authority to bind any other party.

7.10 Survival and merger

- (a) No term of this deed merges on completion of any transaction contemplated by this deed.
- (b) Clauses 3 and 7 survive termination or expiry of this deed together with any other term which by its nature is intended to do so.

7.11 Severability

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

7.12 No third party rights

Except as expressly provided in this deed:

- (a) each person who executes this deed does so solely in its own legal capacity and not as agent or trustee for or a partner of any other person; and
- (b) only those persons who execute this deed have a right or benefit under it.

7.13 Variation

No variation of this deed is effective unless made in writing in the form of a deed and signed by each party.

7.14 Waiver

- (a) No waiver of a right or remedy under this deed is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this deed does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this deed does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

Schedule 1 Dictionary

1 Dictionary

In this deed:

Associate has the meaning given in section 12 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and EOL was the designated body.

Board means the board of directors of EOL.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, Australia.

Competing Proposal means any inquiry, offer, proposal or expression of interest, transaction or arrangement under which, if entered into or completed substantially in accordance with its terms, would result in:

- (a) a person either alone or together with any Associate (other than the Counterparty and its Associates or related entities) directly or indirectly:
 - (i) acquiring, or having the right to acquire, a Relevant Interest in more than 20% of the issued share capital of EOL;
 - (ii) acquiring, obtaining a right to acquire, receiving or becoming the holder of, or otherwise obtaining, a legal, beneficial or economic interest in;
 - (iii) 20% or more of the issued share capital of EOL or any material subsidiary of EOL; or
 - (iv) all or a substantial part or material part of the business or property of the EOL Group (taken as a whole); or
 - (v) acquiring control of EOL or any material Related Body Corporate within the meaning of section 50AA of the Corporations Act, disregarding section 50AA(4) of that Act; or
 - (vi) otherwise acquiring or merging with EOL or any of its controlled entities; or
- (b) the Proposed Transaction not being able to be implemented in accordance with its terms,

whether by takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase or exchange, sale or purchase of assets or businesses, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for EOL, sale or issue of shares or other synthetic merger or any other transaction or arrangement.

Confidentiality Agreement means the confidentiality agreement between EOL and the Counterparty, dated on or about 2 March 2023.

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

Counterproposal has the meaning set out in clause 2.8(f)(i).

Cut Off Date means the date that is 5 Business Days after the date of the provision of the information referred to in clause 2.8(d).

Exclusivity Deadline means 5.00pm (Sydney time) on the date that is three weeks from the date of this deed (or such later date agreed between the parties).

Exclusivity Period means the period commencing on the date of this deed and ending on the date this deed is terminated in accordance with clause 6.

EOL Group means EOL and its Related Bodies Corporate.

EOL Shareholders means the shareholders of EOL.

Government Agency means any foreign or Australian government or governmental, semigovernmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), 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.

Hard Exclusivity Period means the period commencing on the date of this deed and ending at 11:59pm (Sydney time) on the date that is two weeks from the date of this deed.

NBIO has the meaning given in the Background to this deed.

Non-public Information means non-public information about the business or affairs of the EOL Group.

Proposed Transaction has the meaning given in the Background to this deed.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Relevant Interest has the meaning given to that term in section 608 and 609 of the Corporations Act.

Representative of a party means:

- (a) a Related Body Corporate of the party; and
- (b) a director, officer, employee, agent, auditor, adviser, partner, consultant or agent of the party or of a Related Body Corporate of that party.

Scheme Implementation Deed means a scheme implementation deed between EOL and the Counterparty (or its nominee) to be executed by the parties on such terms consistent with market practice for such agreements as reasonably agreed between the parties acting in good faith to give effect to the terms of the NBIO.

Superior Proposal means a bona fide Competing Proposal which in the determination of the Board acting in good faith in order to satisfy what the Board considers to be its fiduciary or statutory duties (after having taken advice from their legal and financial advisers):

- (a) is reasonably capable of being completed in accordance with its terms, taking into account all financial, regulatory and other aspects of the proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal and its conditionality; and

- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to EOL's Shareholders as a whole than the Proposed Transaction, taking into account all aspects of the Competing Proposal and the proposal provided by the Counterparty to the EOL, including the identity, reputation and financial condition of the person making the proposal, consideration, conditionality, funding, certainty and timing of the proposal, and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

2 Interpretation

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

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (e) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable Financial Market and is a reference to that law as amended, consolidated or replaced;
 - (viii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (ix) a monetary amount is in Australian dollars;
- (f) an agreement on the part of two or more persons binds them jointly and severally;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;

- (h) in determining the time of day where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.