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# Merger Implementation Deed

**Australian Renewable Fuels Limited**

**Wentworth Holdings Limited**

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**Baker & McKenzie**  
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**Date** 13 November 2012

**Parties** **Australian Renewable Fuels Limited** (ABN 66 096 782 188) of Level 5, 409 St Kilda Road, Melbourne Victoria 3004 (*Bidder*)

**Wentworth Holdings Limited** (ABN 41 080 167 264) of Level 29, 55 Collins Street, Melbourne Victoria 3000 (*Target*)

## Recitals

- A. The Bidder proposes to make a Bid and the Target Directors propose to recommend that Bid subject to the Independent Expert stating that the Bid is reasonable to Target Shareholders other than Bidder, no Material Adverse Event having occurred and in the absence of a Superior Proposal.
- B. The parties wish to set out the conduct of the Bid process in this Deed.

## Operative provisions

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### 1 Definitions and Interpretation

#### Definitions

- 1.1 In this Deed unless the context requires another meaning:

*Adviser* means a financial, legal, accounting, technical, or other professional or expert adviser to a person.

*Agreed Bid Terms* means the terms and conditions set out in Schedule 1.

*Announcement* means the announcement in the form agreed between the parties.

*Announcement Date* means the date specified as such in clause 4.2.

*ASIC* means the Australian Securities and Investments Commission.

*ASX* means ASX Limited or, where the context requires, the securities market which it operates.

*Bid* means an off-market takeover bid in accordance with the Corporations Act in respect of all of the Target Shares.

*Bid Conditions* means the conditions of the Offer which are set out in Schedule 2.

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

*Bidder Indemnified Party* means Bidder, its Officers and its Advisers.

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

**Bidder's Statement** means the bidder's statement prepared by the Bidder in accordance with the Corporations Act in respect of the Bid.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

**Competing Proposal** means any expression of interest, offer or proposal by any person (other than Bidder or its associates):

- (a) to consider or enter into any transaction which, if ultimately completed, will have the result that:
  - (i) any person or two or more persons who are associates (other than Bidder or its associates) will, or would reasonably be expected to, acquire voting power in 50% or more of Target Shares; or
  - (ii) a person (other than Bidder or its associates) will, or would reasonably be expected to, acquire control of Target, within the meaning of section 50AA of the Corporations Act,

including by way of a takeover bid, scheme of arrangement, amalgamation, merger, capital reconstruction, consolidation, shareholder-approved Target Share acquisition or issuance, share buy-back or repurchase, reverse takeover, establishment of a new holding entity for Target or any other transaction or arrangement with Target;

- (b) to acquire, have a right to acquire or obtain an economic interest in (whether directly or indirectly) all or a substantial part of the assets or business of the Target Group; or
- (c) to form a dual listed company structure, stapled security structure or other form of synthetic merger having the same or substantially the same effect as a takeover bid for, or scheme of arrangement or merger in respect of, Target.

**Confidential Information** means all commercial, financial, legal and technical and other advice, correspondence, material, memoranda, opinions, know-how and information that:

- (a) is disclosed to a party (**Recipient**), its related entities or its advisers by or on behalf of the other party (**Discloser**) (whether before or after the date of this agreement), or which is otherwise acquired directly or indirectly by the Recipient, its related entities or its advisers from the Discloser or any adviser engaged by the Discloser; and
- (b) relates directly or indirectly to the Discloser or its related entities or relates directly or indirectly to the Discloser's or its related entities' respective past, existing or future assets, liabilities, financial position, performance, business, operations, activities, administration, business plans or strategic plans;
- (c) are notes, summaries, compilations, conclusions, calculations, computer records (including data, copies, models, reproductions and recordings) or other material in whatever form made or derived in whole or in part from, or from inspection or evaluation of, any information of the type referred to in paragraph (a).

**Confidentiality Deed** means the mutual confidentiality deed between the Target and Bidder.

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

**Document** includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced.

**Exclusivity Period** means the period between the date of this Deed and the later to occur of:

- (a) 31 January 2013; or
- (b) the end of the Offer Period.

**Express Purpose** means the preparation of the Bidder's Statement by Bidder and of the Target's Statement by Target.

**Government Agency** means:

- (a) a government, whether foreign, federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

**Independent Expert** means the independent expert appointed by Target to prepare an expert's report to be included in the Target's Statement.

**Independent Expert Report** means the report of the Independent Expert included in the Target's Statement as updated and supplemented at any time and from time to time.

**Material Adverse Event** means any change, event, effect, occurrence or state of facts that is, or expected to be, material and adverse to the assets, liabilities (including contingent liabilities that may arise through outstanding, pending or threatened litigation or otherwise), business, operations, financial condition or prospects of Bidder or any of its subsidiaries taken as a whole.

**Offer** means the offers made under the Bid and in accordance with clause 2.2.

**Offer Period** mean the period during which the Offer is open for acceptance.

**Officer** means a director, secretary, other officer, employee or agent.

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

**Representative** means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of the Officers and Advisers of the entity or any of its Related Bodies Corporate.

**Subsidiary** has the same meaning as in the Corporations Act and includes a controlled entity of the relevant person.

**Superior Proposal** means a Competing Proposal which the Target Board in good faith determines is, or is reasonably likely to result in, a proposal by the person making the Competing Proposal that is more favourable to Target Shareholders than the Bid, taking into account all terms and conditions of the Competing Proposal and having obtained written advice from its financial advisers.

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

**Target Directors** means the directors from time to time of the Target.

**Target Group** means Target and its Subsidiaries.

**Target Indemnified Party** means Target, its Officers and its Advisers.

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

**Target Shareholders** means holders of Target Shares determined in accordance with section 633(2) of the Corporations Act.

**Target's Statement** means the target's statement prepared by the Target in accordance with the Corporations Act in response to the Bid.

**Transaction** means the Offer to be made and implemented in accordance with this Deed.

1.2 In this Deed:

- (a) unless the context otherwise requires, a reference to:
  - (i) **dollars** or **\$** are to Australian dollars, the lawful currency of the Australia;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a gender includes all genders;
  - (iv) a document (including this Deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
  - (v) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (vi) parties means the parties to this Deed and to a party means a party to this Deed;
  - (vii) an item, recital, clause, schedule or Annexure is to an item, recital, clause, schedule or Annexure of or to this Deed;
  - (viii) a notice means all notices, approvals, demands, requests, nominations or other communications given by one party to another under or in connection with this Deed;
  - (ix) a person (including any party) includes:
    - (A) a reference to an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency as the case requires; and
    - (B) the person's successors, permitted assigns, executors and administrators;
  - (x) a law:
    - (A) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule,

- ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange;
- (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
- (C) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (xi) a body, other than a party to this Deed (including, without limitation, an institute, association or authority), whether statutory or not:
- (A) which ceases to exist; or
- (B) 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;
- (xii) the word including or includes means including, but not limited to, or includes, without limitation;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) subject to any express provision in this Deed to the contrary, a warranty, representation, covenant or obligation given or entered into by more than one person is given severally only and not jointly;
- (d) headings are for convenience only and do not affect interpretation;
- (e) if a payment or other act must (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day;
- (f) if a period occurs from, after or before a day or the day of an act or event, it excludes that day;
- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it; and
- (h) terms which are not defined in this Deed and which are defined in, or given a meaning for the purpose of, the Corporations Act have the meaning given in the Corporations Act.

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## 2 Announcement and Bid

### Announcement

2.1 Bidder and Target must make the Announcement on the Announcement Date.

### Making the Bid

2.2 Bidder agrees to make offers to all Target Shareholders pursuant to a takeover bid under Chapter 6 of the Corporations Act to acquire all the Target Shares on terms and conditions no less favourable than the Agreed Bid Terms.

### Conduct of the Bid

- 2.3 Bidder may vary the terms and conditions of the Bid in any manner which is permitted by the Corporations Act, provided the varied terms and conditions are not less favourable to Target Shareholders than the Agreed Bid Terms.
- 2.4 Subject to the Corporations Act, Bidder may declare the Bid to be free from any condition or extend the Bid at any time.

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## 3 Target's response

### Target Board's recommendation

- 3.1 Target represents and warrants that:
- (a) the Target Board has met and considered the possibility of Bidder agreeing to make the Bid; and
  - (b) the Target Directors have informed Target that, if Bidder complies with clause 2.2, they will announce to ASX that they unanimously recommend that Target Shareholders accept an offer under the Bid and will accept the Offer in respect of any Shares in Target that they own or control, subject in each case to the Independent Expert stating that the Bid is reasonable to Target Shareholders other than Bidder, no Material Adverse Event having occurred and there being no Superior Proposal.
- 3.2 Target must use reasonable endeavours to procure that:
- (a) Target Board unanimously recommends that Target Shareholders accept the Offers made under the Bid subject to the Independent Expert stating that the Bid is reasonable to Target Shareholders other than Bidder, no Material Adverse Event having occurred and in the absence of a Superior Proposal; and
  - (b) the Target Directors indicate their willingness to accept the Offers made in respect of any Target Shares in which they have a relevant interest subject to the Independent Expert stating that the Bid is reasonable to Target Shareholders other than Bidder, no Material Adverse Event having occurred and in the absence of a Superior Proposal.

### Superior Proposal, Independent Expert Report and Material Adverse Event

- 3.3 If the Independent Expert states that the Bid is not reasonable, a Material Adverse Event occurs or a Superior Proposal is made, the Target Board may withdraw or change its recommendation in respect of the Offers made under the Bid and any Target Director may change his or her intention to accept an Offer made in respect of any Target Share in which he or she has a relevant interest.

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## 4 Facilitation of the Offer

### Draft statements

- 4.1 Each of Bidder and Target will give the other a reasonable opportunity to review an advanced draft of their respective Bidder's Statement and Target's Statement (including the draft Independent Expert Report) and will consult in good faith with respect to any comments made by the other.

### Indicative Timetable

- 4.2 The parties must use their respective best endeavours to comply with the following indicative timetable:

On or immediately following the date of this Deed	Announcement Date
Early December 2012	Lodgement of Bidder's Statement and Target's Statement
Mid December 2012	Despatch of Bidder's Statement and Target's Statement

### Despatch

- 4.3 Target agrees that the Offers and accompanying documents to be sent by the Bidder under item 6 of section 633(1) of the Corporations Act may be sent on a date nominated by Bidder that is earlier than the date otherwise specified under item 6 of section 633(1) of the Corporations Act.

### Promote the Bid

- 4.4 During the Offer Period subject to the Independent Expert stating that the Bid is reasonable to Target Shareholders other than Bidder, no Material Adverse Event having occurred and in the absence of a Superior Proposal, Target will support the Bid and participate in efforts reasonably required by Bidder to promote the merits of the Bid, including meeting with Target Shareholders, analysts, management, customers, press and other parties mutually agreed if requested to do so by Bidder.

### Bid Conditions

- 4.5 Subject to clause 4.6, Target will not to do (or omit to do) anything which will, or is likely to, result in any of the Bid Conditions being breached, or not being, or not being capable of being, satisfied.
- 4.6 Nothing in clause 4.5 prevents Target or the Target Board from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the Target Board after receiving specific written legal advice from the Target's external legal advisers, be likely to constitute a breach of the Target Board's fiduciary or statutory duties.
- 4.7 If any event occurs or becomes apparent which would cause any of the conditions of the Bid to be breached or prevent them from being able to be satisfied, Target must, to the extent Target or any Target Director is actually aware of such information, promptly notify Bidder of the event.

### Conduct of the business

- 4.8 During the Offer Period, Target must carry on its business in accordance with normal and prudent practice and in the ordinary course. For the purposes of this clause 4.8, responding to the Bid (together with any associated activity and expenditure) in accordance with this document is deemed to be Target carrying on its business in the ordinary course.

### Independent Expert Report

- 4.9 Bidder acknowledges that Target will be obtaining an Independent Expert Report which will be sent to Target Shareholders together with the Target's Statement.
- 4.10 Target agrees to:
- (a) allow Bidder reasonable access to the Independent Expert upon reasonable notice given by Bidder to Target, subject to:
    - (i) Target and its representatives being entitled to be present at all discussions or meetings with the Independent Expert; and
    - (ii) the preservation of the independence of such expert; and
  - (b) use its reasonable endeavours to provide a copy of the first draft of the Independent Expert Report (along with an advanced draft of the Target's Statement) as soon as practicable upon receipt of such draft from the Independent Expert.
- 4.11 Bidder acknowledges that the Independent Expert Report may be updated from time to time by the Independent Expert to reflect events and circumstances subsequent to the issue of the report and that references in this document to the opinion of the Independent Expert include references to that opinion as varied or supplemented at any time.

### Board Appointments

- 4.12 Conditional upon Bidder declaring the Bid to be free from all Bid Conditions:
- (a) Bidder will have the right to nominate any person or persons to be appointed as a director of the Target Board (*Bidder Nominees*);
  - (b) Bidder will invite a member of the Target Board, being Mr Vaughan Webber, to be appointed as a director of the Bidder Board (*Target Nominee*);
  - (c) Target must ensure that:
    - (i) the Target Board promptly appoints each Bidder Nominee as a casual or additional director of Target Board until the next annual general meeting of Target; and
    - (ii) upon such appointments becoming effective, the other directors of the Target Board and the then directors of each of Target 's subsidiaries resign, and
  - (d) upon the acceptance by the Target Nominee of the invitation extended by Bidder in accordance with clause 4.14 (b), Bidder must ensure that the Bidder Board promptly appoints the Target Nominee as a casual or additional director of the Bidder Board until the next annual general meeting of Bidder.

### Provision of information

- 4.13 Each of Bidder and Target will:
- (a) give the other and their employees, agents, representatives, financial advisers, accountants and lawyers full and free access to all information required for the purpose of the preparation of the Bidder's Statement or Target's Statement respectively; and

- (b) subject to clause 4.14, respond as soon as reasonably practicable (but in any event no later than 9 am on the next Business Day after the notice of the query or request has been received) to any queries or requests for further information.

### **Access to other documents**

- 4.14 Each of Bidder and Target will provide the other and their agents, representatives, financial advisers, accountants and lawyers with access to such other documents, records and information, and access to its management, as the other reasonably requests and which is reasonably necessary for the Express Purpose.

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## **5 Exclusivity**

### **Termination of existing discussions**

- 5.1 Target represents and warrants that, as at the date of this Deed, it has terminated all negotiations or discussions in respect of any Competing Proposal.

### **No-shop restriction**

- 5.2 During the Exclusivity Period, Target must ensure that neither it, nor any of its Representatives, directly or indirectly, solicits, invites, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any other person in relation to a Competing Proposal or potential Competing Proposal.
- 5.3 Nothing in clause 5.1 prevents Target from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Bid or its business generally.

### **No-talk restriction**

- 5.4 Subject to clause 5.6, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:
- (a) enters into or participates in any negotiations or discussions with any person regarding a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal; or
  - (b) provides any non-public information regarding the Target Group's businesses or operations to a person (other than Bidder, its Representatives or their respective associates) for the purposes of enabling or assisting that person to make a Competing Proposal; or
  - (c) enters into any agreement, arrangement or understanding in relation to, or which may reasonably be expected to lead to, an expression of interest, offer or proposal from any other person in relation to a Competing Proposal,
- even if:
- (d) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target; or
  - (e) the other person has publicly announced the Competing Proposal.

## Notification

- 5.5 Subject to clause 5.6, during the Exclusivity Period, if a Competing Proposal is put to Target then Target must promptly inform Bidder of that fact, the identity of the person or persons and the key terms of any proposal made by that person. For the purposes of this clause, a material variation to a proposal which has previously been notified to Bidder is taken to be a new proposal to which this clause applies.

## Exception

- 5.6 Despite anything else in this Deed the restrictions and obligations in clauses 5.4 and 5.5 do not apply to the extent that:
- (a) the relevant action is in response to a bona fide Competing Proposal which was not solicited or invited in contravention of clause 5.2;
  - (b) the Target Board, acting in good faith, determines that the Competing Proposal is a Superior Proposal or that the steps which the Target Board proposes to take may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and
  - (c) the Target Board, acting in good faith, determines after receiving written advice from Target's external legal advisers that failing to respond to the Competing Proposal would be likely to constitute a breach of the Target Board's fiduciary or statutory duties.

## 6 Break Fees

### Target Break Fee

- 6.1 Subject to clauses 6.3 and 6.4, if:
- (a) any director of Target:
    - (i) makes any public statement to the effect that he does not support (or no longer supports) the Transaction; or
    - (ii) (without limiting (i) above) fails to recommend the Transaction to Target Shareholders or, having done so, any director of Target publicly withdraws or varies his favourable recommendation of the Transaction (or any part of it), other than (in either such case) where:
      - (iii) Target is entitled to terminate this Deed under clause 8.1(a) as a result of a material breach by Bidder of its obligations under this Deed;
      - (iv) the Independent Expert concludes in the Independent Expert Report (or in any revised or supplementary report) that the Transaction is not reasonable; or
      - (v) a Material Adverse Event occurs;
  - (b) a Competing Proposal is announced or put to the Target Board and either:
    - (i) at any time during the Exclusivity Period, the proponent of the Competing Proposal acquires voting power or an economic interest in at least 50% of

- Target Shares or acquires or obtains an economic interest in all or a substantial part of the assets or businesses of the Target Group; or
- (ii) the Competing Proposal is recommended or promoted by any director of Target; or
  - (c) Target or any of its directors does (or omits to do) anything within its or his control which results in any of the Bid Conditions being breached and Bidder does not declare the Offer free of the breached condition (which Bidder is under no obligation to do); or
  - (d) Bidder terminates this Deed in accordance with clause 8.1(a) as a result of a material breach by Target of its obligations under this Deed,

then Target must pay to Bidder the amount of \$140,000 (*Target Break Fee*).

#### **Bidder Break Fee**

6.2 Subject to clauses 6.3 and 6.4, if Target validly terminates this Deed in accordance with:

- (a) clause 8.1(a) as a result of a material breach by Bidder of its obligations under this Deed; or
- (b) clause 8.1(c) because a Material Adverse Event occurs,

then Bidder must pay to Target the amount of \$140,000 (*Bidder Break Fee*).

#### **Compliance with law**

6.3 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 Target Break Fee or the Bidder Break required to be paid under clauses 6.1 or 6.2 (*Impugned Amount*):

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes unacceptable circumstances,

then:

- (d) the requirement to pay the Target Break Fee or the Bidder Break Fee (as the case may be) does not apply to the extent of the Impugned Amount; and
- (e) if Bidder or Target (as the case may be) has received the Impugned Amount, it must refund it within 10 Business Days of the final determination being made.

#### **Regulatory intervention**

6.4 If any regulatory body (including ASIC or the Takeovers Panel) requires any modification to the Target Break Fee or the Bidder Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this Deed to that extent, and
- (b) it will not result in a breach of this Deed or termination of the transactions contemplated by it.

## Acknowledgments

- 6.5 Each of Target and Bidder acknowledge that:
- (a) it has received legal advice on this Deed and the operation of this clause;
  - (b) it considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause in order to secure the significant benefits to it (and its shareholders) resulting from the Transaction;
  - (c) the Target Break Fee and the Bidder Break Fee have each been calculated to reimburse the Bidder or Target (as the case may be) for the following:
    - (i) fees for legal and financial advice in planning and pursuing the Transaction;
    - (ii) reasonable opportunity costs incurred in engaging in the Transaction and in not engaging in other alternative transactions or strategic initiatives;
    - (iii) cost of management and directors' time in planning and pursuing the Transaction; and
    - (iv) out-of-pocket expenses incurred in planning and pursuing the Transaction, in each case, incurred by Bidder or Target (as the case may be) directly or indirectly as a result of having entered into this Deed and pursuing the Transaction;
  - (d) the amount of fees, costs and expenses referred in clause 6.5(c) is inherently unascertainable and that, even after termination of this Deed, the costs will not be able to be accurately ascertained; and
  - (e) the amount of the Target Break Fee and the Bidder Break Fee (as applicable) is a genuine pre-estimate of the amount of fees, costs and losses referred to in clause 6.5(c), it being acknowledged by the parties that the costs would most likely be in excess of the Target Break Fee and the Bidder Break Fee (as the case may be).

### Payment - Target Break Fee

- 6.6 Any Target Break Fee which is payable under this clause must be paid within 5 Business Days of receipt of a written demand from Bidder following the occurrence of any of the events specified in clause 6.1.
- 6.7 To avoid doubt, the Target Break Fee is only payable once.

### Payment - Bidder Break Fee

- 6.8 Any Bidder Break Fee which is payable under this clause must be paid within 5 Business Days of receipt of a written demand from Target following the occurrence of any of the events specified in clause 6.2.
- 6.9 To avoid doubt, the Bidder Break Fee is only payable once.

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## 7 Warranties

### Target representations and warranties

- 7.1 The Target represents and warrants to the Bidder that, at the date of this Deed:

- (a) it and each of its Subsidiaries is duly incorporated under the laws of its place of incorporation;
- (b) it has the power and authority to sign this Deed and perform and observe all its terms;
- (c) this Deed has been duly executed and is a legal, valid and binding deed enforceable in accordance with its terms;
- (d) this Deed does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it, or any of its Subsidiaries, is a party or is subject or by which it or any of its Subsidiaries is bound;
- (e) neither the execution or performance by it of this Deed nor any transaction contemplated under this Deed will breach or accelerate the obligations of it or of any of its Subsidiaries under any provision of any material agreement or deed to which any of them is a party;
- (f) it is not in breach of its continuous disclosure obligations under the Listing Rules or the Corporations Act, and is not relying on Listing Rule 3.1A to withhold any information from disclosure, other than, as at the date of this Deed, the existence, status and other information concerning the transactions contemplated in this Deed;
- (g) it is not aware of any act, omission, event or fact that would result in one or more of the conditions in Schedule 2 being triggered; and
- (h) there are:
  - (i) 223,351,239 Target Shares; and
  - (ii) 15 million unlisted options in the Target having an exercise price of \$0.06 per option and expiring no later than 20 January 2013 (it is acknowledged that these options will expire before the end of the Offer Period and can be exercised before their date of expiry, in which case the Offer will extend to any Target Shares that are issued due to the exercise of such options),

on issue, and neither it nor any of its Subsidiaries are under any obligation to issue and have not granted any person the right to call for the issue of any shares or other securities in it or any of its Subsidiaries.

### **Target indemnities**

7.2 Target agrees with Bidder (on Bidder's own behalf and separately as trustee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all claims, liabilities and loss which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 7.1.

### **Bidder representations and warranties**

7.3 The Bidder represents and warrants to the Target that, at the date of this Deed:

- (a) it is duly incorporated under the laws of its place of incorporation;
- (b) it has the power and authority to sign this Deed and perform and observe all its terms;

- (c) this Deed has been duly executed and is a legal, valid and binding deed enforceable in accordance with its terms;
- (d) this Deed does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it is a party or is subject or by which it is bound;
- (e) neither the execution or performance by it of this Deed nor any transaction contemplated under this Deed will breach or accelerate the obligations of it or of any of its Subsidiaries under any provision of any material agreement or deed to which any of them is a party;
- (f) it is not in breach of its continuous disclosure obligations under the Listing Rules or the Corporations Act, and is not relying on Listing Rule 3.1A to withhold any information from disclosure, other than, as at the date of this Deed, the existence, status and other information concerning the transactions contemplated in this Deed; and
- (g) it is not aware of any act, omission, event or fact that would result in one or more of the conditions in Schedule 2 being triggered.

#### **Bidder indemnities**

7.4 Bidder agrees with Target (on Target's own behalf and separately as trustee for each of the other Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all claims, liabilities and loss which any of the Target Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 7.3.

#### **Survival**

- 7.5 Each representation, warranty and indemnity in clause 7:
- (a) is severable;
  - (b) will survive termination of this Deed; and
  - (c) is given with the intent that liability under it is not confined to breaches which are discovered before the date of termination of this Deed.

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## **8 Termination**

### **Termination rights**

- 8.1 This Deed may be terminated by a party if:
- (a) the other party is in material breach of this Deed and, to the extent that the breach is capable of remedy, that breach is not remedied by that other party within 10 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate; or
  - (b) the Bid lapses for any reason including non-satisfaction of a condition of the Bid;
  - (c) a Material Adverse Event occurs;

- (d) by Target only – if the Independent Expert at any time opines the Bid is not reasonable;
- (e) by Target only - if a Superior Proposal is made or publicly announced for Target by a third party, which is recommended by the Target Board, and Bidder does not, by the end of three Business Days following receipt of the notice of the Superior Proposal from Target, offer to vary the terms of the Bid in a manner which the Target Board determines in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties, is more favourable to Target Shareholders than the Superior Proposal, and within a further five Business Days implements that variation of the Bid; or
- (f) by Bidder only – if the Target Board changes its unanimous recommendation to Target Shareholders in relation to the Offer,

by written notice to the other party.

### **Effect of termination**

8.2 If this Deed is terminated by another party under this clause 8:

- (a) each party will be released from its obligations under this Deed except its obligations under clause 9 and other obligations which by their nature or express terms survive termination;
- (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 Bid.

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## **9 Confidentiality**

### **General**

9.1 No party may disclose the existence or contents of this Deed except:

- (a) in the Announcement;
- (b) to that party's professional advisers; or
- (c) to the extent required by law or the rules of any stock exchange (provided the disclosing party consults with the other party as to the form and content of any disclosure required and uses its best endeavours to minimise the extent of such disclosure).

### **Obligation of confidentiality**

9.2 Each party must:

- (a) hold all Confidential Information received from the other in strict confidence and not disclose, or cause or permit the disclosure of such Confidential Information or of any opinion in respect of Confidential Information or a Document created in relation to the Confidential Information except as permitted by this Deed;

- (b) take reasonable steps to keep all Confidential Information and any Documents created in relation to the Confidential Information secure and protected from any use, disclosure, access, damage or destruction which is inconsistent with this Deed;
- (c) promptly notify the other party if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of any Confidential Information;
- (d) do anything reasonably required by the other party to restrain a breach of this Deed or any infringement of the other party's rights arising out of this Deed, whether by court proceedings or otherwise;
- (e) not use Confidential Information except for the Express Purpose; and
- (f) take reasonable steps to ensure that none of its officers, employees, advisers, agents or related bodies corporate does anything which, if done by the party, would be inconsistent with this Deed.

### **Limits on application of confidentiality obligations**

9.3 Each party's obligations in relation to Confidential Information do not apply to any Confidential Information that:

- (a) is required to be disclosed by an applicable law or legally binding order of any Government Agency, or a requirement of a stock exchange or regulator;
- (b) is in or becomes part of the public domain other than as a result of a breach of this Deed;
- (c) was at the time of disclosure already in the lawful possession or control of the party or any of its advisers;
- (d) the other party has consented in writing to its being disclosed;
- (e) was developed or learnt by the party (or its employees, officers, agents or advisers) independently of disclosure by the other; or
- (f) becomes available to the party from a third person who, at the time of use or disclosure, was legally entitled to possess and disclose the information.

### **No representation or warranty**

9.4 Neither party nor any of their officers, employees or advisers:

- (a) makes any representation or warranty as to the accuracy or completeness of the Confidential Information, that the Confidential Information has been audited, verified or prepared with reasonable care or that the Confidential Information is the totality of the information that may be relevant to the Express Purpose;
- (b) accepts any responsibility for any interpretation, opinion or conclusion that may be formed as a result of examining the Confidential Information; or
- (c) is liable for any loss of any kind (including without limitation damages, costs, interest, loss of profits or special loss or damage) arising from an error, inaccuracy, incompleteness or similar defect in the Confidential Information or any default, negligence or lack of care in relation to the preparation or provision of the Confidential Information, other than the intentional disclosure of materially false or misleading Confidential Information.

### Disclosure in Bidder's Statement or Target's Statement

9.5 For the avoidance of doubt, disclosure of the existence or contents of this Deed in the Bidder's Statement or the Target's Statement will be subject to the requirements of clause 9.1(c) above.

### Confidentiality Deed

9.6 The parties agree that the Confidentiality Deed is superseded by this Deed, and that the parties to that agreement are released from any further obligations or restrictions.

## 10 Notices

### Requirements

10.1 All notices must be:

- (a) in legible writing and in English;
- (b) addressed to the receiving party at the address or fax number set out below or to any other address or fax number that a party may notify to the other:

to the **Target**:

Address:	Level 29 55 Collins Street Melbourne VIC 3000
Attention:	Company Secretary
Fax no:	+61 3 9981 0020

to the **Bidder**:

Address:	Level 5 409 St Kilda Road, Melbourne VIC 3004
Attention:	Company Secretary
Fax no:	+61 3 8692 1122

- (c) signed by the sender or, where the sender is a company, by an Authorised Officer or under the common seal of the sender; and
- (d) sent to the receiving party by hand, prepaid post (airmail if to or from a place outside Australia) or fax.

### Receipt

10.2 Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of the receiving party;

- (b) if sent by prepaid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
- (c) if sent by fax, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole fax was sent to the receiving party's fax number,

but if a notice is served by hand, or is received by the receiving party's fax, on a day that is not a Business Day, or after 5:00 pm on a Business Day, the notice will be considered to have been received by the receiving party at 9.00 am on the next Business Day.

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## **11 General provisions**

### **Costs**

- 11.1 Each party must bear its own costs and expenses in relation to the negotiation, preparation, execution and stamping of this Deed.

### **Further assurances**

- 11.2 Each party must, at its own expense, whenever reasonably requested by the other party, promptly do or arrange for others to do, everything reasonably necessary or desirable to give full effect to this Deed.

### **Successors and assigns**

- 11.3 This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

### **Assignment**

- 11.4 A party must not assign or deal in any way with any of its rights under this Deed without the other party's prior written consent.

### **Waiver and exercise of rights**

- 11.5 A waiver by a party of a provision of or of a right under this Deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.
- 11.6 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 11.7 A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right.
- 11.8 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

### **Rights cumulative**

- 11.9 The rights, remedies and powers of the parties under this Deed are cumulative and do not exclude any other rights, remedies or powers provided by law and in equity independently of this Deed.

**Indemnities**

- 11.10 Each indemnity in this Deed is a continuing obligation, separate from and independent of the other obligations and survives the termination of this Deed.
- 11.11 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

**Invalid or unenforceable provisions**

- 11.12 If a provision of this Deed is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
  - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

**GST**

- 11.13 Unless expressly included, the consideration for any supply under or in connection with this Deed does not include GST.
- 11.14 To the extent that any supply made by a party to another party (*Recipient*) under or in connection with this Deed is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Deed for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 11.15 The amount of GST payable in accordance with this clause 11.14 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

**Amendment**

- 11.16 This Deed may be amended only by a document signed by all parties.

**Counterparts**

- 11.17 This Deed may be signed in counterparts and all counterparts taken together constitute one document.

**Governing law**

- 11.18 This Deed is governed by the laws of Victoria.

**Jurisdiction**

- 11.19 Each party irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of Victoria; and
  - (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

## Schedule 1

### Agreed Bid Terms

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**1. Offer Price**

Bidder offers to each Target Shareholder 5.7 Bidder Shares for every 1 Target Share held.

**2. Conditions**

The Offer may be subject only to conditions:

- (a) that are the same as the conditions described in Schedule 2 of this Deed; or
- (b) that are no less favourable to Target Shareholders than those described in Schedule 2 of this Deed.

## Schedule 2

### Bid Conditions

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

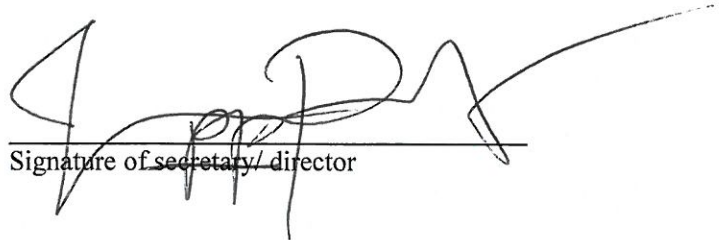
- (a) **(Minimum ownership)** That at the end of the Offer Period the Bidder and its associates have a relevant interest in at least 90% (by number) of the Target Shares on issue at that time.
- (b) **(Conduct of Target business)** Except for any proposed transaction or matter the material terms of which have been publicly announced by Target to the ASX before the Announcement Date or in the ordinary course of business, during the period commencing on the Announcement Date and ending at the end of the Offer Period, none of the following events occurs nor is an intention to do any of the following announced:
  - (i) a member of the Target Group through its action or omission acquires, offers to acquire, agrees to acquire or comes under an obligation to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$100,000;
  - (ii) a member of the Target Group enters into, offers to enter into or announces that it proposes to enter into any agreement, joint venture, partnership, management agreement or commitment which would require expenditure, or the foregoing of revenue, by one or more members of the Target Group which is, in aggregate, more than \$100,000;
  - (iii) a member of the Target Group incurs or commits to, or grants to another person a right the exercise of which would involve the Target Group incurring or committing to, any capital expenditure or liability in respect of one or more related items of greater than \$100,000 other than as a consequence of the Transaction (including, without limitation, fees payable to its Advisers and the Independent Expert); or
  - (iv) a member of the Target Group enters into or agrees to enter into any contract of service or management contract, or varies or agrees to vary any existing contract of service or management contract with any director or officer of the Target Group, or pays or agrees to pay any retirement benefit or allowance to any director or officer of the Target Group, or makes or agrees to make any substantial change in the basis or amount of remuneration of any director, officer or other employee of the Target Group (except as required by law or provided under any agreement or arrangement as in effect and publicly disclosed as at the Announcement Date).
- (c) **(Distributions)** That during the period commencing on the Announcement Date and ending at the end of the Offer Period, Target does not make or declare, or announce an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- (d) **(Target minimum cash)** That at all times during the period commencing on the Announcement Date and ending at the end of the Offer Period, Target has net cash of at least \$14 million.
- (e) **(Prescribed occurrences)** That none of the occurrences specified in section 652C of the Corporations Act happens in relation to Target or any member of the Target Group during the period commencing on the Announcement Date and ending at the end of the Offer Period.

**Execution**

**Executed as a deed.**

**Signed, sealed and delivered by  
Australian Renewable Fuels Limited**  
by a director and secretary/director:

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Signature of secretary/ director

PHILIP STUART CARLING  
Name of director (please print)

JULIEN PAUYOT  
Name of secretary/ director (please print)

**Signed, sealed and delivered by  
Wentworth Holdings Limited**  
by a director and secretary/director:

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Signature of secretary/ director

DOUG ROBINSON  
Name of director (please print)

VAUGHAN WEBB  
Name of secretary/ director (please print)