



## ASX ANNOUNCEMENT

Date: 23 August 2013

ASX: IPT

Number: 297/200813

---

### IMPACT MINERALS LIMITED TO MERGE WITH INVICTUS GOLD LIMITED

#### Highlights

- Impact to offer five Impact shares for every four Invictus shares on issue.
- Combined pro-forma market capitalisation of ~\$12 M.
- Impact to offer one new listed Impact option for every one listed Invictus option (IVGOA) on issue exercisable at 20 cents, expiring 30<sup>th</sup> November 2015.
- Simplified corporate structure and a more compelling investment case.
- Post merger, Impact to have three key projects with drill ready targets at the:
  - Mulga Tank Ni-Cu-PGE JV Project;
  - Broken Hill Ni-Cu-PGE JV Project; and
  - Commonwealth Au-Ag-Base Metals Project.
- Medium term strategy of continued business development in Turkey and joint ventures on other projects.
- Reduced costs and overheads.

Impact Minerals Limited (“Impact”; ASX: IPT) and Invictus Gold Limited (“Invictus”; ASX: IVG) are pleased to announce that they have executed a Merger Implementation Agreement (“MIA”) pursuant to which Impact proposes to acquire all of the issued shares in Invictus that it does not already own under a Scheme of Arrangement (“Share Scheme”).

Under the proposed Share Scheme, Impact will offer five IPT shares for every four IVG shares on issue. This will result in Impact acquiring 28,962,680 Invictus shares, being the number of shares it does not already own or control and issuing approximately 36,203,350 new Impact shares.

Invictus has also made a proposal for the cancellation of all of the listed Invictus options on issue by separate scheme of arrangement (“Option Scheme”). Under the proposed Option Scheme, eligible Invictus optionholders will receive one new listed Impact option for every one listed Invictus option held at an exercise price of 20 cents and expiring 30<sup>th</sup> November 2015. Implementation of the Option Scheme is conditional on the Share Scheme becoming effective.

Impact is currently the largest shareholder of Invictus with a shareholding interest of 73.99%. Impact currently holds two positions on the board of Invictus, being Mr Peter Unsworth and Dr Michael Jones.

The merger is unanimously recommended by the Independent Invictus Directors (comprising Mr Michael Busbridge and Mr Richard Basham), who have also agreed to vote in favour of the merger in respect of all shares they control, in the absence of a superior proposal and subject to an independent expert concluding that the Share Scheme is in the best interests of Invictus shareholders.

Messrs Unsworth and Jones did not participate in the Invictus Board deliberations because they are also directors of Impact.

The merger of Impact and Invictus will result in a simpler corporate and asset ownership structure for Impact. It will also provide Invictus shareholders with a broader asset base, better access to capital and share market liquidity.

### **Merger Implementation Agreement (MIA)**

The merger will be implemented by a scheme of arrangement under the Australian Corporations Act.

Under the MIA, each party has agreed to take the steps necessary to implement the Schemes.

The offer is subject to a number of conditions which are customary for a transaction of this type, including:

- Receipt of ASIC, ASX and other regulatory approvals;
- No material adverse change or prescribed event for either company (as defined in MIA);
- An Independent Expert Report concluding that the Share Scheme is in the best interests of Invictus shareholders; and
- Receipt of Court and Invictus shareholder approval.

A copy of the full MIA will accompany this announcement.

### **Board**

The board of the merged entity will remain the current board of Impact.

### **Treatment of unlisted Invictus options**

Invictus and Impact will cooperate with each other to ensure that all unlisted Invictus options are cancelled or are otherwise dealt with to Impact's satisfaction.



ASX Code: **IPT**

## Timetable

The indicative timetable for the transaction is as follows:

Thursday, 5 September 2013	Draft scheme documentation lodged with ASIC
Thursday, 26 September 2013	Court hearing to approve convening Invictus shareholder and optionholder meetings
Thursday, 3 October 2013	Scheme documents mailed to Invictus shareholders and optionholders
Tuesday, 5 November 2013	Scheme meetings
Tuesday, 12 November 2013	Second court hearing to approve Schemes
Wednesday, 27 November 2013	Implementation of the Schemes

The above timetable is subject to possible change.

- ENDS -

For further information, please contact:

**Dr Michael Jones, Managing Director – Impact Minerals Limited**

Telephone: +61 8 96454 6666, email: [MikeJ@impactminerals.com.au](mailto:MikeJ@impactminerals.com.au)

Refer to [www.impactminerals.com.au](http://www.impactminerals.com.au)

**Mr Richard Basham, Director – Invictus Gold Limited**

Telephone: + 61 8 9328 5789, email: [greenticker@msn.com.au](mailto:greenticker@msn.com.au)

Refer to [www.invictusgold.com.au](http://www.invictusgold.com.au)

**For media inquiries, please contact:**

Kevin Skinner

Field PR

t: +61 8 8234 9555

e: [kevin@fieldpr.com.au](mailto:kevin@fieldpr.com.au)

# Merger Implementation Agreement

**Impact Minerals Limited**  
ACN 119 062 261

and

**Invictus Gold Limited**  
ACN 145 891 907

Table of contents

1. Definitions and interpretation ..... 1

    1.1 Definitions..... 1

    1.2 Interpretation ..... 13

2. Conditions..... 14

    2.1 Obligations to complete Share Scheme not binding until Conditions satisfied.... 14

    2.2 Conditions to the Share Scheme ..... 15

    2.3 Obligations to complete Option Scheme not binding until Conditions satisfied... 17

    2.4 Conditions to the Option Scheme ..... 17

    2.5 Waiver of a Condition ..... 18

    2.6 Fulfilment of each Condition ..... 19

    2.7 When a Condition is fulfilled..... 19

    2.8 If a Condition is not fulfilled or waived..... 19

    2.9 Certificate ..... 20

3. Schemes..... 20

    3.1 Share Scheme..... 20

    3.2 Share Scheme Consideration ..... 20

    3.3 No amendments to Share Scheme without consent..... 21

    3.4 Ineligible Foreign Holders ..... 21

    3.5 Option Scheme..... 21

    3.6 Option Scheme Consideration ..... 21

    3.7 No amendment to the Option Scheme without consent ..... 22

    3.8 Treatment of Non-scheme Options ..... 22

    3.9 Transfer or cancellation of Non-scheme Options ..... 22

    3.10 ASX Waiver ..... 22

4. Conduct of business ..... 23

    4.1 Conduct of Invictus' business ..... 23

    4.2 Conduct of Impact's business ..... 23

    4.3 Acknowledgement ..... 23

5. Obligations of both parties in relation to the Share Scheme and the Option Scheme.. 23

6. Invictus obligations ..... 24

7. Impact obligations..... 27

8. Exclusivity..... 28

    8.1 No other existing discussions ..... 28

    8.2 No-shop restriction..... 28

    8.3 No-talk restriction..... 29

    8.4 Exception to no-talk ..... 29

8.5	Disclosure of Alternative Proposal .....	29
8.6	Fiduciary obligations in relation to clause 8.5.....	29
8.7	Announcement of a Superior Proposal .....	30
9.	Announcement .....	30
9.1	Announcement of Scheme.....	30
9.2	Restrictions on Announcements .....	30
9.3	Notice of Announcement.....	30
10.	Termination.....	30
10.1	When a party may terminate.....	30
10.2	Obligations on termination .....	31
11.	Representation and warranties .....	32
11.1	Mutual representations and warranties .....	32
11.2	Invictus representations and warranties.....	33
11.3	Impact representations and warranties .....	34
11.4	No representations made on economic or future matters.....	35
11.5	Reliance on representations and warranties .....	35
11.6	When warranties are given .....	36
12.	Release .....	36
13.	GST .....	36
13.1	GST interpretation .....	36
13.2	GST payable in addition to consideration for taxable supplies .....	37
13.3	Tax invoice .....	37
13.4	Consideration exclusive of GST.....	37
14.	Notices .....	37
15.	Amendment and assignment .....	38
15.1	Amendment .....	38
15.2	Assignment.....	38
16.	General.....	38
16.1	Governing law.....	38
16.2	Jurisdiction .....	38
16.3	Liability for expenses .....	38
16.4	Further acts and documents .....	39
16.5	Continuing obligations .....	39
16.6	Waiver of rights.....	39
16.7	No partnership or agency.....	39
16.8	Indemnities .....	39
16.9	Consents .....	40

16.10 Severance and enforceability.....	40
16.11 No merger .....	40
16.12 Entire agreement .....	40
16.13 Counterparts.....	40
16.14 Attorneys .....	40
Schedule 1 – Invictus securities.....	41
Schedule 2 – Impact securities .....	42
Annexure 1 - Share Scheme of Arrangement.....	44
Annexure 2 - Share Scheme Deed Poll.....	45
Annexure 3 – Option Scheme of Arrangement.....	46
Annexure 4 – Option Scheme Deed Poll.....	47

Date *22nd August* 2013

## Parties

**Impact Minerals Limited** ACN 119 062 261 of 309 Newcastle Street, Northbridge, Western Australia (**Impact**)

**Invictus Gold Limited** ACN 145 891 907 of 309 Newcastle Street, Northbridge, Western Australia (**Invictus**)

## Background

- A. Invictus and Impact have agreed to effect a transaction by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Invictus and Invictus Shareholders, other than Impact, pursuant to which Impact will acquire all of the Scheme Shares and Invictus will become a wholly-owned subsidiary of Impact, in accordance with this Agreement.
- B. Invictus intends to propose the Scheme to Invictus Shareholders and issue the Scheme Booklet.
- C. Invictus and Impact have agreed in good faith to implement the Scheme on the terms and conditions of this Agreement.

## Agreement

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires:

**Agreement** means this Merger Implementation Agreement.

**Alternative Proposal** means, in relation to Invictus:

- (a) any bona fide, funded proposal or offer by any person (other than Impact) made in writing to Invictus to evaluate or enter into any transaction which is similar to the Transaction (whether a scheme of arrangement, a takeover bid or otherwise) or under which (other than as required or contemplated by the Scheme):
  - (i) that person (together with its associates) may acquire a relevant interest in 10% or more of the Invictus Shares;
  - (ii) that person may acquire, directly or indirectly (including by way of joint venture, dual listed company structure, strategic alliance or otherwise), all or a substantial part of the Business or assets of Invictus; or

- (iii) that person may otherwise acquire control of or merge or amalgamate with Invictus; or
- (b) any acquisition of, or agreement to acquire, a relevant interest in 10% of the Invictus Shares by any person (other than Impact) to which Invictus is a party.

**Announcement** means a press release, announcement or other public statement other than an explanatory statement or supplementary explanatory statement required by the Corporations Act.

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

**ASX** means ASX Limited ABN 98 008 624 691 or the stock market operated by it, as the context requires.

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it, from or by a Government Agency; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

**Business** means:

- (a) in relation to Invictus and its Subsidiaries, the business presently carried on by Invictus and its Subsidiaries; and
- (b) in relation to Impact and its Subsidiaries, the business presently carried on by Impact and its Subsidiaries.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth, Western Australia.

**Common Directors** means Michael Jones and Peter Unsworth.

**Condition** means:

- (a) in relation to the Share Scheme, a condition precedent to completion of the Share Scheme in clause 2.2; and
- (b) in relation to the Option Scheme, a condition precedent to completion of the Option Scheme in clause 2.4.

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

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

**Court** means the Supreme Court of Western Australia or the Federal Court of Australia or such other court of competent jurisdiction as agreed by Impact and Invictus in writing.

**Effective means:**

- (a) when used in relation to the Share Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act of the order of the Court made under sections 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) in relation to the Share Scheme; or
- (b) when used in relation to the Option Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act of the order of the Court made under sections 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) in relation to the Option Scheme.

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

**Excluded Shares** means any Invictus Shares held by, on behalf of or for the benefit of, Impact or its Subsidiaries.

**Exclusivity Period** means the period between the date of this Agreement and the earlier of the Sunset Date or the Effective Date.

**First Court Date** means the first day of the hearing by the Court of an application for an order under section 411(1) of the Corporations Act convening the Scheme Meetings or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Government Agency** means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the Foreign Investment Review Board, ASIC, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

**GST** means the same as in the GST Law.

**GST Law** means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Impact Material** means the information provided by Impact to Invictus in accordance with clause 7(b) for inclusion in the Scheme Booklet, other than information relating to the financial or trading position of Impact following Implementation to the extent that such information has been prepared by Impact in reliance on information provided by Invictus.

**Impact Option** means an option to subscribe for an Impact Share.

**Impact Prescribed Event** means, except as required by this Agreement or by the Share Scheme or the Option Scheme (or with the prior written consent of Invictus), the occurrence of any of the following:

- (a) **(convert shares)** Impact or a Subsidiary of Impact converts all or any of its shares into a larger or smaller number of shares;

- (b) **(reduce share capital)** Impact or a Subsidiary of Impact resolves to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) **(buy-back)** Impact or a Subsidiary of Impact:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(issue shares or options)** Impact or a subsidiary of Impact issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option or right to a share, excluding:
  - (i) any issue or grant contemplated by the Share Scheme or Option Scheme or this Agreement; and
  - (ii) any Impact Shares issued by Impact as a result of the exercise of existing Impact Options;
- (e) **(change to terms of options)** Impact (or the board of directors of Impact) makes any amendment to the terms of issue of any Impact O, where, as a consequence, any one or more of the following occurs:
  - (i) the period for exercise of any Impact Option is extended;
  - (ii) the number of Impact Options that are exercisable at any time is increased;
  - (iii) the earliest date for exercise of any Impact Option is brought forward;
  - (iv) the exercise price of any Impact Option is reduced; or
  - (v) the number of Impact Shares to be issued on exercise of any Impact Option is increased;
- (f) **(issue convertible securities)** Impact or a Subsidiary of Impact issues, or agrees to issue, securities or other instruments convertible into shares or debt securities;
- (g) **(declare dividend)** other than any dividend paid, declared or announced by Impact on or before the date of this Agreement in accordance with its ordinary dividend policy, Impact declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets;
- (h) **(Insolvency Event)** an Insolvency Event occurring in relation to Impact;
- (i) **(change to constitution)** Impact makes any material change or amendment to its constitution;

- (j) **(change to accounting practice or policies)** Impact making any change to its accounting practices or policies, other than to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standards or electing to form a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth);
- (k) **(debentures)** Impact or a Subsidiary of Impact issues, agrees to issue or grants an option to subscribe for debentures (as defined in section 9 of the Corporations Act);
- (l) **(disposal)** Impact or a Subsidiary of Impact disposes, or agrees to dispose, of the whole, or a substantial part, of its Business or property;
- (m) **(security)** Impact or a Subsidiary of Impact charges, or agrees to charge, the whole or a substantial part, of its Business or property, or creates or alters, or agrees to create or alter, any mortgage, charge, lien, security interest or other encumbrance over the whole or a substantial part of its Business or property;
- (n) **(share disposal)** Impact or a Subsidiary of Impact disposes, or agrees to dispose, of shares in a Subsidiary of that party;
- (o) **(litigation)** Impact or a Subsidiary of Impact becomes a party to any material litigation;
- (p) **(financial indebtedness)** except in the ordinary course of Business, Impact or a Subsidiary of Impact incurs any financial indebtedness or issues any debt securities of in aggregate more than \$50,000 other than:
  - (i) advances under credit facilities in existence as at the date of this Agreement and fully and fairly disclosed in the Impact Material or are known by the Common Directors; or
  - (ii) any loans by Impact to Invictus to fund the operations of Invictus;
- (q) **(Material Contracts)** Impact or a Subsidiary of Impact:
  - (i) changes the terms of any of its Material Contracts to the material detriment of Impact or a Subsidiary of Impact;
  - (ii) terminates any of its Material Contracts;
  - (iii) pays, discharges or satisfies any claims, liabilities or obligations under any of its Material Contracts other than in accordance with past practice and consistent with the contract terms; or
  - (iv) waives any material claims or rights under or waives the benefit of any provisions of any of its Material Contracts;
- (r) **(commitments)** Impact or a Subsidiary of Impact enters into:
  - (i) any onerous contract or commitment; or

- (ii) any long term contract or commitment (including any joint venture or partnership agreement) except in the ordinary course of Business; or
- (s) **(renewing or extending agreements)** except in the ordinary course of its Business, Impact or a Subsidiary of Impact exercises any material contractual right or other option to renew or extend an existing agreement (including under any lease),

provided that (if otherwise caught by the terms of this definition) an acquisition or disposal of any business, assets (or interest in such assets), entity or undertaking by Impact or a Subsidiary of Impact, or a contract or commitment of the kind referred to in clause (r) above, will not be an Impact Prescribed Event if the terms of that acquisition, disposal or potential contract or commitment, as the case may be, have been fully and fairly disclosed either to the market generally or to Invictus under this proviso, or are known by the Common Directors, immediately prior to the execution of this Agreement and the acquisition, disposal, contract or commitment as the case may be, proceeds substantially in accordance with those terms.

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

**Implementation** means, in relation to the Share Scheme, the implementation of the Share Scheme, following the Share Scheme becoming Effective.

**Implementation Date** means the fifth Business Day immediately following the Record Date.

**Independent Invictus Directors** means the directors of Invictus other than the Common Directors.

**Independent Expert** means an independent, reputable and qualified expert nominated by Invictus.

**Independent Expert's Report** means the report prepared by the Independent Expert stating whether or not, in its opinion:

- (a) the Share Scheme is in the best interests of the Invictus Shareholders, and setting out the reasons for that opinion; and
- (b) the Option Scheme is in the best interests of the Scheme Optionholders, and setting out the reasons for that opinion.

**Ineligible Foreign Holder** means a Scheme Shareholder or Scheme Optionholder whose address in the register of Invictus Shareholders or the register of Invictus Optionholders is in a jurisdiction outside Australia and its external territories and New Zealand, but excluding any Scheme Shareholder or Scheme Optionholder whose address in the register of Invictus Shareholders or Invictus Optionholders is in a jurisdiction where Impact and Invictus are reasonably satisfied that the issue of New Impact Shares or New Impact Options in that jurisdiction under the Share Scheme or Option Scheme (as the case may be) would be neither prohibited by law nor unduly onerous.

**Insolvency Event** means, in relation to an entity:

- (a) the entity resolving to be wound up or liquidated;
- (b) the appointment of a liquidator, provisional liquidator or administrator of the entity;
- (c) the making of an order by a court for the winding up of the entity;
- (d) the entity executing a deed of company arrangement; or
- (e) the appointment of a receiver or a receiver and manager, in relation to the whole, or a substantial part, of the property of the entity.

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

**Invictus Group** means Invictus and its related bodies corporate.

**Invictus Option** means an option to subscribe for an Invictus Share.

**Invictus Prescribed Event** means, except as required by this Agreement or the Share Scheme or the Option Scheme (or with the prior written consent of Impact), the occurrence of any of the following:

- (a) **(convert shares)** Invictus or a Subsidiary of Invictus converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduce share capital)** Invictus or a Subsidiary of Invictus resolves to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) **(buy-back)** Invictus or a Subsidiary of Invictus:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(issue shares or options)** Invictus or a Subsidiary of Invictus issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option or right to a share, excluding any Invictus Shares issued by Invictus as a result of the exercise of existing Invictus Options;
- (e) **(change to terms of Invictus Options)** Invictus (or the Invictus Board) makes any amendment to the terms of issue of any Invictus Option, where, as a consequence, any one or more of the following occurs:
  - (i) the period for exercise of any Invictus Option is extended;
  - (ii) the number of Invictus Options that are exercisable at any time is increased;
  - (iii) the earliest date for exercise of any Invictus Option is brought forward;

- (iv) the exercise price of any Invictus Option is reduced; or
- (v) the number of Invictus Shares to be issued on exercise of any Invictus Option is increased;
- (f) **(issue convertible securities)** Invictus or a Subsidiary of Invictus issues, or agrees to issue, securities or other instruments convertible into shares or debt securities;
- (g) **(declare dividend)** other than any dividend paid, declared or announced by Invictus on or before the date of this Agreement in accordance with its ordinary dividend policy, Invictus declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets;
- (h) **(Insolvency Event)** an Insolvency Event occurring in relation to Invictus;
- (i) **(change to constitution)** Invictus makes any change or amendment to its constitution;
- (j) **(change to accounting practice or policies)** Invictus making any change to its accounting practices or policies, other than to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standards or electing to form a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth);
- (k) **(debentures)** Invictus or a Subsidiary of Invictus issues, agrees to issue or grants an option to subscribe for debentures (as defined in section 9 of the Corporations Act);
- (l) **(disposal)** Invictus or a Subsidiary of Invictus disposes, or agrees to dispose, of the whole, or a substantial part, of its Business or property;
- (m) **(security)** Invictus or a Subsidiary of Invictus charges, or agrees to charge, the whole or a substantial part, of its Business or property, or creates or alters, or agrees to create or alter, any mortgage, charge lien, security interest or other encumbrance over the whole or a substantial part of its Business or property;
- (n) **(share disposal)** Invictus or a Subsidiary of Invictus disposes, or agrees to dispose, of shares in a Subsidiary of that party;
- (o) **(litigation)** Invictus or a Subsidiary of Invictus becomes a party to any material litigation;
- (p) **(financial indebtedness)** except in the ordinary course of business, Invictus or a Subsidiary of Invictus incurs any financial indebtedness or issues any debt securities of in aggregate more than \$50,000 other than advances under credit facilities in existence as at the date of this Agreement;
- (q) **(Material Contracts)** Invictus or a Subsidiary of Invictus:

- (i) changes the terms of any of its Material Contracts to the material detriment of Invictus or a Subsidiary of Invictus;
  - (ii) terminates any of its Material Contracts;
  - (iii) pays, discharges or satisfies any claims, liabilities or obligations under any of its Material Contracts other than in accordance with past practice and consistent with the contract terms; or
  - (iv) waives any material claims or rights under or waives the benefit of any provisions of any of its Material Contracts;
- (r) **(commitments)** Invictus or a Subsidiary of Invictus enters into:
- (i) any onerous contract or commitment; or
  - (ii) any long term contract or commitment (including any joint venture or partnership agreement) except in the ordinary course of Business; or
- (s) **(renewing or extending agreements)** except in the ordinary course of its Business, Invictus or a Subsidiary of Invictus exercises any material contractual right or other option to renew or extend an existing agreement (including under any lease),

provided that (if otherwise caught by the terms of this definition) an acquisition or disposal of any business, assets (or interest in such assets), entity or undertaking by Invictus or a Subsidiary of Invictus, or a contract or commitment of the kind referred to in clause (r) above, will not be an Invictus Prescribed Event if the terms of that acquisition, disposal, or potential contract or commitment, as the case may be, have been fully and fairly disclosed either to the market generally or to Impact under this proviso or are known by the Common Directors immediately prior to the execution of this Agreement and the acquisition, disposal, contract or commitment as the case may be, proceeds substantially in accordance with those terms.

**Invictus Share** means a fully paid ordinary share in Invictus.

**Invictus Shareholder** means each person entered in the Register as a holder of Invictus Shares, other than any Excluded Shares.

**Invictus Shareholder Approval** means a resolution in favour of the Share Scheme passed by the required majorities of Invictus Shareholders under section 411(4)(a)(ii) of the Corporations Act.

**Listing Rule** means a listing rule of ASX.

**Material Adverse Change** means in relation to a party, one or more occurrences or matters individually or in aggregate that:

- (a) have, or could have, a material adverse effect on the business, assets, liabilities, financial condition, results or operations or prospects of that party and its Subsidiaries, taken as a whole; or
- (b) prevent that party from performing its obligations under this Agreement

provided that:

- (c) any change in the market price or trading volume of shares after the date of this Agreement; and
- (d) any change as regards to one party (the first party) (which change is otherwise caught by the terms of this definition) that has been fully and fairly disclosed either to the market generally or otherwise to the other party (the second party) in writing under this proviso, or is known by the Common Directors, immediately prior to the execution of this Agreement and the change occurs as regards the first party substantially in accordance with those terms,

will not be taken into account in determining whether there has been a Material Adverse Change.

**Material Contract** means any contract which is or may reasonably be expected to be material to the assets, liabilities, financial position, profits, losses or operation of the entity which is party to it.

**Meeting Date** means 5.00pm on the date on which Invictus Shareholders vote on a resolution to approve the Share Scheme under section 411(4)(a) of the Corporations Act.

**New Impact Shares** means those Impact Shares to be issued to Scheme Shareholders in consideration for their Scheme Shares pursuant to the Share Scheme.

**New Impact Options** means those Impact Options each exercisable at \$0.20 on or before 30 November 2015 and otherwise on the terms and conditions in Annexure 3 to be issued to Scheme Optionholders in consideration for their Scheme Options pursuant to the Option Scheme.

**Non-scheme Options** means those Invictus Options identified as “Tranche 2 – Tranche 8” in Schedule 1, being the unlisted Invictus Options on issue in Invictus at 5.00pm on the Record Date.

**Option Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Invictus and the Scheme Optionholders, the form of which is attached as Annexure 3, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Impact and Invictus.

**Option Scheme Consideration** means the consideration to be provided by Impact to each Scheme Optionholder for the cancellation of each Scheme Option, as determined in accordance with clause 3.6.

**Option Scheme Deed Poll** means a deed poll to be executed by Impact in the form of Annexure 4 (or such other form as is agreed between Impact and Invictus, including any alterations made with approval or at the discretion of the Court which are agreed by Impact and Invictus (each acting reasonably)) under which Impact covenants in favour of the Scheme Optionholders to perform its obligations under the Option Scheme.

**Option Scheme Meeting** means the meeting of Scheme Optionholders, to be convened by the Court, to consider the Option Scheme.

**Record Date** means the day which is 5 Business Days after the Effective Date, or any other date agreed by the parties in writing.

**Register** means:

- (a) in respect of the Invictus Shareholders, the register of members of Invictus; and
- (b) in respect of the Scheme Optionholders, the register of optionholders of Invictus.

**Regulatory Approvals** means the consents, approvals, clearances, decisions, determinations or other acts by a Government Agency necessary to effect Implementation (if any).

**Regulator's Draft** means the draft of the Scheme Booklet in a form which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Relevant Date** means, in relation to a Condition, the date or time specified in this Agreement for its fulfilment or, if no date or time is specified, 8.00am on the Second Court Date, subject, in either case, to extension under clause 2.8.

**Sale Agent** has the meaning in clause 3.4.

**Scheme or Share Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act between Invictus and the Scheme Shareholders, the form of which is attached as Annexure 1, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Impact and Invictus.

**Scheme Booklet** means the information memorandum in respect of the Share and Option Scheme to be approved by the Court and despatched to Invictus Shareholders and Scheme Optionholders, and includes the Scheme, Option Scheme, Share Scheme Deed Poll, Option Scheme Deed Poll, an explanatory statement complying with the requirements of the Corporations Act and the Corporations Regulations, the Independent Expert's Report and the notice of meeting and proxy form.

**Scheme Meetings** means the Share Scheme Meeting and the Option Scheme Meeting.

**Scheme Options** means those Invictus Options identified as "Tranche 1" in Schedule 1, being the listed Invictus Options on issue in Invictus at 5.00pm on the Record Date.

**Scheme Optionholders** means each person entered in the Register as a holder of Scheme Options as at 5.00pm on the Record Date.

**Scheme Shareholders** means each Invictus Shareholder, other than Impact as at 5.00pm on the Record Date (taking into account registration of all registrable

transfers and transmission applications received at Invictus' share registry by the Record Date).

**Scheme Share** means an Invictus Share on issue at 5.00pm on the Record Date, other than Excluded Shares.

**Second Court Date** means the first day on which the Court hears the application for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme and Option Scheme or, if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application is heard.

**Share Scheme Consideration** means the consideration to be provided by Impact to each Scheme Shareholder for the transfer to Impact of each Scheme Share, as determined in accordance with clause 3.2.

**Share Scheme Deed Poll** means a deed poll to be executed by Impact in the form of Annexure 2 (or such other form as is agreed between Impact and Invictus, including any alterations made with approval or at the discretion of the Court which are agreed by Impact and Invictus (each acting reasonably)) under which Impact covenants in favour of the Scheme Shareholders to perform its obligations under the Share Scheme.

**Share Scheme Meeting** means the meeting of Invictus Shareholders, to be convened by the Court, to consider the Share Scheme.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of Part 1.2, Division 6 of the Corporations Act, or is a subsidiary or otherwise controlled by the first within the meaning of any approved accounting standard.

**Sunset Date** means, subject to any extension under clause 2.8, 31 December 2013.

**Superior Proposal** means an Alternative Proposal in relation to Invictus that:

- (a) in the determination of the Invictus Board acting in good faith and supported by Invictus' legal advisers, is reasonably capable of being valued and completed, taking into account both the nature of the Alternative Proposal and the person or persons making it; and
- (b) in the determination of the Invictus Board acting in good faith and in order to satisfy what that board considers to be its fiduciary or statutory duties and supported by Invictus' legal advisers, would, if completed substantially in accordance with its terms, result in a transaction more favourable to Invictus Shareholders than the Transaction.

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

**Transaction** means:

- (a) the proposed acquisition of all the issued Invictus Shares by Impact (other than those Invictus Shares already held by Impact); and

- (b) the proposed cancellation or acquisition of all the issued Invictus Options, on the terms set out in this Agreement.

**Transfer** has the meaning given in clause 3.9.

## 1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates otherwise:
- (b) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to:
- (i) a clause or schedule is a reference to a clause or schedule of this Agreement;
  - (ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - (iii) a document in writing includes a document produced by means of typewriting, printing, lithography, photography and other modes of representing or reproducing words in a visible form, recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
  - (iv) a document (including this Agreement) includes a reference to all schedules, exhibits, attachments and annexures to it, and is to that document as varied, novated, ratified or replaced from time to time;
  - (v) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
  - (vi) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a day is to a period of time commencing at midnight and ending twenty four (24) hours later;

- (f) a reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act;
- (g) the word “**includes**” in any form is not a word of limitation;
- (h) the word “**applicable**” when used of a law is used to refer to any relevant law (including any subordinate or delegated legislation or statutory instrument of any kind) of a jurisdiction in or out of Australia, and also to any relevant judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any Government Agency within or outside Australia;
- (i) a reference to “**information**” is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programmes, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (j) the words “**associate**”, “**controller**”, “**entity**”, “**officer**”, “**related body corporate**”, “**relevant interest**” and “**subsidiary**” have the same meaning as in section 9 of the Corporations Act, and “**control**” has the same meaning as in section 50AA of the Corporations Act;
- (k) time is a reference to time in Perth, Western Australia;
- (l) a reference to “**\$**” or “**dollar**” is to Australian currency;
- (m) a contravention of or a breach of any of the representations and warranties includes any of the representations and warranties not being complete, true and correct;
- (n) each representation and warranty is a separate representation and warranty, and its meaning is not affected by any other representation or warranty;
- (o) a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (p) when a day on or by which anything to be done is not a Business Day, that thing may be done on or by the next Business Day.

## 2. Conditions

### 2.1 Obligations to complete Share Scheme not binding until Conditions satisfied

Subject to this clause 2, the Share Scheme will not become Effective unless each of the Conditions in clause 2.2 are satisfied or waived to the extent and in the manner set out in this clause 2.

## 2.2 Conditions to the Share Scheme

The Conditions to the Share Scheme are:

	Condition	Party entitled to benefit
(a)	<b>(Board recommendation)</b> between the date of this Agreement and the date on which the Share Scheme is approved by Invictus Shareholders, the Independent Invictus Directors and Common Directors do not change or withdraw their recommendation to Invictus Shareholders to vote in favour of the Share Scheme and all resolutions (if any) incidental to the Share Scheme;	Impact
(b)	<b>(orders convening the Share Scheme Meeting)</b> the Court orders the convening of the Share Scheme Meeting;	Both
(c)	<b>(Independent Expert's Report)</b> the Independent Expert's Report concludes that the Share Scheme is in the best interests of Invictus Shareholders and, upon consideration of all available relevant information from time to time, the Independent Expert does not change that conclusion or withdraw its report prior to 8.00am on the Second Court Date;	Both
(d)	<b>(Invictus Shareholder approval)</b> a resolution in favour of the Share Scheme passed by the required majorities of Invictus Shareholders under section 411(4)(a)(ii) of the Corporations Act is obtained;	Both
(e)	<b>(Court approval of the Share Scheme)</b> the Court makes orders under section 411(4)(b) of the Corporations Act approving the Share Scheme and any conditions imposed by the Court under section 411(6) of the Corporations Act are acceptable to the parties acting reasonably;	Both
(f)	<b>(orders lodged with ASIC)</b> an office copy of the Court orders approving the Share Scheme is lodged with ASIC under section 411(10) of the Corporations Act;	Both
(g)	<b>(orders and injunctions)</b> no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing Implementation is in effect at 8.00am on the Second Court Date;	Both

	Condition	Party entitled to benefit
(h)	<b>(Regulatory Approvals)</b> the Regulatory Approvals are obtained prior to 8.00am on the Second Court Date;	Both
(i)	<b>(no Material Adverse Change in relation to Invictus)</b> from the date of this Agreement until 8.00am on the Second Court Date, no Material Adverse Change in relation to Invictus occurs, is announced or otherwise is disclosed or becomes public;	Impact
(j)	<b>(no Material Adverse Change in relation to Impact)</b> from the date of this Agreement until 8.00am on the Second Court Date, no Material Adverse Change in relation to Impact occurs, is announced or otherwise is disclosed or becomes public;	Invictus
(k)	<b>(no Invictus Prescribed Event)</b> from the date of this Agreement until 8.00am on the Second Court Date, no Invictus Prescribed Event occurs;	Impact
(l)	<b>(no Impact Prescribed Event)</b> from the date of this Agreement until 8.00am on the Second Court Date, no Impact Prescribed Event occurs;	Invictus
(m)	<b>(ASX quotation of the shares)</b> the New Impact Shares to be issued as consideration pursuant to the terms of the Share Scheme are approved for official quotation by ASX (conditional only on the issue of those shares and on Impact providing ASX with a completed Appendix 3B as required by the Listing Rules) prior to 5.00pm on the day before the Second Court Date;	Invictus
(n)	<b>(no prohibitive action)</b> no Government Agency or judicial entity or authority taking any action or making any order or decree which action, order or decree restrains or prohibits the Implementation of the Share Scheme prior to 5.00pm on the day before the Second Court Date; and	Both
(o)	<b>(Option Scheme)</b> the Court approves the Option Scheme on terms that are reasonably acceptable to the parties.	Impact

**2.3 Obligations to complete Option Scheme not binding until Conditions satisfied**

Subject to this clause 2, the Option Scheme will not become Effective unless each of the Conditions in clause 2.4 are satisfied or waived to the extent and in the manner set out in this clause 2.

**2.4 Conditions to the Option Scheme**

The Conditions to the Option Scheme are:

	<b>Condition</b>	<b>Party entitled to benefit</b>
(a)	<b>(Board recommendation)</b> between the date of this Agreement and the date on which the Option Scheme is approved by Scheme Optionholders, the Independent Invictus Directors and Common Directors do not change or withdraw their recommendation to Scheme Optionholders to vote in favour of the Option Scheme and all resolutions (if any) incidental to the Option Scheme;	Impact
(b)	<b>(orders convening the Option Scheme Meeting)</b> the Court orders the convening of the Option Scheme Meeting;	Both
(c)	<b>(Independent Expert's Report)</b> the Independent Expert's Report concludes that the Option Scheme is in the best interests of Scheme Optionholders and, upon consideration of all available relevant information from time to time, the Independent Expert does not change that conclusion or withdraw its report prior to 8.00am on the Second Court Date;	Both
(d)	<b>(Scheme Optionholder approval)</b> a resolution in favour of the Option Scheme passed by the required majorities of Scheme Optionholders under section 411(4)(a)(ii) of the Corporations Act is obtained;	Both
(e)	<b>(Court approval of the Option Scheme)</b> the Court makes orders under section 411(4)(b) of the Corporations Act approving the Option Scheme and any conditions imposed by the Court under section 411(6) of the Corporations Act are acceptable to the parties acting reasonably;	Both
(f)	<b>(orders lodged with ASIC)</b> an office copy of the Court orders approving the Option Scheme is lodged with ASIC under section 411(10) of the Corporations Act;	Both

	Condition	Party entitled to benefit
(g)	<b>(ASX quotation of the options)</b> the New Impact Options to be issued as consideration pursuant to the terms of the Option Scheme are approved for official quotation by ASX (conditional only on the issue of those options and on Impact providing ASX with a completed Appendix 3B as required by the Listing Rules) prior to 5.00pm on the day before the Second Court Date;	Invictus
(h)	<b>(orders and injunctions)</b> no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing implementation of the Option Scheme is in effect at 8.00am on the Second Court Date;	Both
(i)	<b>(no prohibitive action)</b> no Government Agency or judicial entity or authority taking any action or making any order or decree which action, order or decree restrains or prohibits the implementation of the Option Scheme prior to 5.00pm on the day before the Second Court Date; and	Both
(j)	<b>(Listing Rule waiver)</b> ASX granting a waiver from Listing Rule 6.23.2 in relation to the Option Scheme and in relation to the Transfer of Non-scheme Options (if required) or Invictus Shareholders give any necessary approvals under Listing Rule 6.23.2 in relation to the Option Scheme and in relation to the Transfer of Non-scheme Options (if required); and	Both
(k)	<b>(Share Scheme)</b> the Court approves the Share Scheme on terms that are reasonably acceptable to the parties.	Both

## 2.5 Waiver of a Condition

- (a) **(if only one party benefiting, that party only may waive)** If a Condition has been included for the benefit of one party only (as specified in relation to a Condition in the third column of the tables in clauses 2.2 and 2.4), only that party may, in its sole and absolute discretion, waive the breach or non fulfilment of the Condition.
- (b) **(if both parties benefiting, both must waive)** If a Condition has been included for the benefit of both parties (as specified in relation to a Condition in the third column of the tables in clause 2.2 and 2.4), the breach or non fulfilment of the Condition may be waived only by the consent of both parties.

- (c) **(conditional waiver)** If a waiver by a party of a Condition is itself made subject to a condition and the other party accepts that condition, the terms of that condition apply accordingly. If the other party does not accept a conditional waiver of a Condition, that Condition has not been waived.
- (d) **(waiver precludes litigation)** If a party waives the breach or non fulfilment of a Condition, that waiver precludes the party from suing another party for any breach of this Agreement that resulted in the breach or non fulfilment of the Condition.
- (e) **(waiver restricted)** Unless specified in the waiver, a waiver of the breach or non-fulfilment of any Condition will not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from events or circumstances giving rise to the breach or non-fulfilment of the first Condition; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event or circumstance.
- (f) **(waiver in writing)** Any waiver must be in writing.

## 2.6 Fulfilment of each Condition

Each party must:

- (a) **(procure satisfaction of Condition)** use its reasonable endeavours to procure that each Condition is satisfied as soon as practicable after the date of this Agreement, including providing all reasonable assistance to the other party as is necessary to satisfy each Condition; ;
- (b) **(not prevent satisfaction of Condition)** not take any action (except as required by law including, for the avoidance of doubt, an action taken to avoid a potential breach of directors' fiduciary duties or statutory obligations) which is designed or is likely to prevent the Conditions being satisfied, without the prior consent of the other party; and
- (c) **(promptly notify)** promptly notify the other party of the fulfilment or waiver of a Condition and must keep the other party informed of any material developments of which it becomes aware in relation to a Condition.

## 2.7 When a Condition is fulfilled

Each Condition is deemed to be fulfilled on the Relevant Date unless the party for whose benefit the Condition has been included (or, in the case of a Condition included for the benefit of all those parties, either party) gives notice to the other party on or before the Relevant Date of the non-fulfilment of the Condition.

## 2.8 If a Condition is not fulfilled or waived

If a Condition to the Share Scheme has not been fulfilled or waived by the Relevant Date, or the Effective Date has not occurred or is incapable of occurring by the Sunset Date, the parties:

- (a) will consult in good faith to determine whether the Share Scheme or Option Scheme (as applicable) may proceed by way of alternative means or methods; and
- (b) may agree to extend the Relevant Date or the Sunset Date, or both.

## **2.9 Certificate**

Invictus and Impact must provide the Court at the hearing on the Second Court Date with a certificate confirming that all of the Conditions (other than clauses 2.2(e) and (f)) have been satisfied or waived in accordance with the terms of this Agreement.

## **3. Schemes**

### **3.1 Share Scheme**

Invictus agrees to propose the Share Scheme upon and subject to the terms of this Agreement, under which, subject to the Share Scheme becoming Effective:

- (a) all of the Scheme Shares held by the Scheme Shareholders will be transferred to Impact; and
- (b) Scheme Shareholders will be entitled to receive the Share Scheme Consideration for each Scheme Share held on the Record Date.

### **3.2 Share Scheme Consideration**

- (a) Subject to clause 3.2(d), the parties will procure that each Scheme Shareholder receives 5 New Impact Shares for every 4 Scheme Shares held as at 5.00pm on the Record Date in accordance with the terms of this Agreement, provided that if a Scheme Shareholder holds less than 4 Invictus Shares on the Record Date, Impact will issue that Scheme Shareholder 1.25 New Impact Shares for every Scheme Share held.
- (b) Subject to clause 3.4, Impact undertakes and warrants to Invictus that in consideration for the transfer to Impact of each Scheme Share held by a Scheme Shareholder under the terms of the Share Scheme, on the Implementation Date, Impact will provide to each Scheme Shareholder the Share Scheme Consideration in accordance with the terms of this Agreement and the Share Scheme.
- (c) Impact will ensure that the New Impact Shares to be issued as Share Scheme Consideration will be validly issued, fully paid, and rank equally with Impact's other issued fully paid ordinary shares from their date of issue and that application will be made to ASX for quotation of the New Impact Shares.
- (d) Any fractional entitlement of a Scheme Shareholder to New Impact Shares will be rounded up or down to the nearest whole number with fractions of 0.5 rounded up to the nearest whole number of New Impact Shares.

### 3.3 No amendments to Share Scheme without consent

Invictus must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Share Scheme without the prior consent of Impact, such consent not to be unreasonably withheld.

### 3.4 Ineligible Foreign Holders

Where a Scheme Shareholder is an Ineligible Foreign Holder, the number of New Impact Shares or New Impact Options to which the Scheme Shareholder or Scheme Optionholder would otherwise be entitled, will be allotted to a nominee approved by Impact, Invictus and (if necessary) ASIC (**Sale Agent**) who will sell those New Impact Shares or New Impact Options as soon as practicable (at the risk of that Ineligible Foreign Holder) and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, and selling costs, to that Ineligible Foreign Holder in full satisfaction of that Ineligible Foreign Holder's rights under this Agreement to Share Scheme Consideration or Option Scheme Consideration.

### 3.5 Option Scheme

- (a) Invictus must propose a creditors' scheme of arrangement, to be conducted concurrently with the Share Scheme, between itself and each Scheme Optionholder under which all outstanding Scheme Options will be cancelled and each Scheme Optionholder will be entitled to receive the Option Scheme Consideration.
- (b) Invictus and Impact agree that their obligations in clauses 5 and 6 (for Invictus) and clauses 5 and 7 (for Impact) will apply mutatis mutandis to the creditors' scheme of arrangement (proposed in clause 3.5(a) above) as if the reference to the Scheme is to be construed as a reference to the Option Scheme.
- (c) Impact will execute the Option Scheme Deed Poll in which it undertakes in favour of each Scheme Optionholder that it will, subject to the Scheme and the Option Scheme becoming Effective, pay the Option Scheme Consideration to each Scheme Optionholder.

### 3.6 Option Scheme Consideration

- (a) The Option Scheme Consideration is 1 New Impact Option for every 1 Scheme Option on the terms set out in Annexure 3.
- (b) Impact undertakes and warrants to Invictus that in consideration of the cancellation of each Scheme Option held by a Scheme Optionholder under the terms of the Option Scheme, on the Implementation Date, Impact will grant to each Scheme Optionholder the Option Scheme Consideration in accordance with the terms of this Agreement and the Option Scheme.
- (c) Impact will ensure that application will be made to ASX for quotation of the New Impact Options.

### 3.7 No amendment to the Option Scheme without consent

Invictus must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of Impact, such consent not to be unreasonably withheld.

### 3.8 Treatment of Non-scheme Options

The parties must discuss in good faith and cooperate with each other to ensure that all outstanding Invictus Options (other than the Scheme Options) (**Non-scheme Options**) are either cancelled, acquired by Impact, vest and are converted into Invictus Shares or are otherwise dealt with to Impact's satisfaction, before the Second Court Date.

### 3.9 Transfer or cancellation of Non-scheme Options

- (a) If the parties agree under clause 3.8 that Impact will pay consideration for the Non-scheme Options to be transferred, cancelled, waived or allowed to lapse (**Transfer**), Invictus agrees to cooperate with Impact to facilitate the Transfer (including, if required the Invictus Board making any necessary lawful amendment, consent or determination for the purposes of the relevant terms and conditions upon which the Non-scheme Options were issued).
- (b) If Impact elects to pay consideration for Non-scheme Options to be transferred, cancelled, waived or allowed to lapse in accordance with clause 3.9(a), Impact will offer the holders of those Non-scheme Options consideration which generally accords with the value of the Share Scheme Consideration, with appropriate adjustment for certain factors, including relevant exercise prices and the time value of money.

### 3.10 ASX Waiver

- (a) As soon as reasonably practicable after the date of this Agreement, Invictus must use its reasonable endeavours to procure that ASX grants a waiver from Listing Rule 6.23.2 in respect of the Option Scheme and, if required, in respect of the Transfer of Non-scheme Options.
- (b) If the waiver referred to in clause 3.10(a):
  - (i) is obtained on or before the date the Regulator's Draft is provided to ASIC, but is subject to one or more conditions that are not reasonably satisfactory to Impact; or
  - (ii) is not obtained on or before the date the Regulator's Draft is provided to ASIC,

Invictus agrees to seek any approvals that are required from the Invictus Shareholders under Listing Rule 6.23.2 in relation to the Option Scheme and in relation to the Transfer of Non-scheme Options (if required) on the same date on which the meeting of Scheme Optionholders is held.

## **4. Conduct of business**

### **4.1 Conduct of Invictus' business**

From the date of this Agreement up to and including the Implementation Date, Invictus must, and Invictus must ensure that each of its Subsidiaries, conduct the Business in the ordinary course, in substantially the same manner and at the same locations as previously conducted and, to the extent consistent, use reasonable efforts to:

- (a) preserve intact its current business organisation;
- (b) keep available the services of its current officers and employees;
- (c) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with it; and
- (d) maintain the Business and its assets and keep its assets in good working order, including maintaining at least its current level of insurance.

### **4.2 Conduct of Impact's business**

From the date of this Agreement up to and including the Implementation Date, Impact must, and Impact must ensure that each of its Subsidiaries, conduct the Business in the ordinary course, in substantially the same manner and at the same locations as previously conducted and, to the extent consistent, use reasonable efforts to:

- (a) preserve intact its current business organisation;
- (b) keep available the services of its current officers and employees;
- (c) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with it; and
- (d) maintain the Business and its assets and keep its assets in good working order, including maintaining at least its current level of insurance.

### **4.3 Acknowledgement**

The parties acknowledge that Impact may, at its discretion, on or before the Implementation Date, undertake a capital raising by way of an issue of securities or borrowing.

## **5. Obligations of both parties in relation to the Share Scheme and the Option Scheme**

- (a) Each party must use its reasonable endeavours to give effect to the Share Scheme and the Option Scheme, subject to this Agreement and compliance with their respective obligations, powers and duties under this Agreement, their constituent documents and all applicable law and the proper performance by the directors of Invictus and Impact of their fiduciary duties and statutory obligations.

- (b) Each party agrees to use its best endeavours to complete its obligations in this Agreement.

## 6. Invictus obligations

Invictus must:

- (a) **(commission Independent Expert's Report)** appoint the Independent Expert and commission the preparation of the Independent Expert's Report and provide all assistance and information reasonably requested by the Independent Expert to enable the preparation or updating of the Independent Expert's Report;
- (b) **(prepare Scheme Booklet)** prepare a Scheme Booklet in accordance with all applicable law (including the Corporations Act and Corporations Regulations, the Listing Rules and applicable ASIC regulatory guides);
- (c) **(Scheme Booklet to contain statement)** ensure the Scheme Booklet includes a statement (on the basis of statements made to it by each of the Independent Invictus Directors and the Common Directors) that:
- (i) subject to the Independent Expert concluding that the Scheme is in the best interests of Invictus Shareholders that:
- A. the Independent Invictus Directors and the Common Directors recommend the approval of the Share Scheme; and
- B. the Independent Invictus Directors and the Common Directors intend to vote or cause the voting of any Invictus Shares in which they have a relevant interest in favour of the Share Scheme,
- in each case in the absence of a Superior Proposal; and
- (ii) subject to the Independent Expert concluding that the Option Scheme is in the best interests of Scheme Optionholders that:
- A. the Independent Invictus Directors and the Common Directors recommend the approval of the Option Scheme; and
- B. the Independent Invictus Directors and the Common Directors intend to vote or cause the voting of any Scheme Options in which they have a relevant interest in favour of the Option Scheme,
- in each case in the absence of a Superior Proposal.
- (d) **(apply for ASX and ASIC relief)** use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX and ASIC as may be required to facilitate implementation of the Share Scheme and Option Scheme, including (if applicable) applying to ASX for a waiver of Listing Rule 6.23.2 to obtain the approval of Invictus Shareholders for the cancellation of

Invictus Options and the Transfer of Non-scheme Options (if required) pursuant to clause 3.10;

- (e) **(Invictus information)** prepare and provide to Impact such information as Impact reasonably requires to prepare the Impact Material for inclusion in the Scheme Booklet;
- (f) **(consult with Impact on form of Scheme Booklet)** consult with Impact in good faith in relation to the form and content of the Scheme Booklet, including taking into account its reasonable comments and incorporating the Impact Material.
- (g) **(lodge Regulator's Draft)** as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, lodging a Regulator's Draft with ASIC in accordance with section 411(2) of the Corporations Act;
- (h) **(prepare Court documents)** prepare all documents necessary for the Court proceedings relating to the Share Scheme and the Option Scheme:
  - (i) in accordance with all applicable law; and
  - (ii) in consultation with Impact as to the form and content of the Court documents;
- (i) **(seek Court order to convene Scheme Meetings)** apply to the Court under section 411(1) of the Corporations Act for an order directing Invictus to convene the Scheme Meetings;
- (j) **(convene Scheme Meetings)** convene the Scheme Meetings, in accordance with the orders made by the Court under section 411(1) of the Corporations Act;
- (k) **(register explanatory statement)** take all reasonable measures necessary to cause ASIC to register the explanatory statement relating to the Share Scheme and the Option Scheme in accordance with section 412(6) of the Corporations Act;
- (l) **(ASIC review)** keep Impact informed at all times of any matters raised by ASIC in relation to the Scheme Booklet, and use all reasonable endeavours, in co-operation with Impact, to resolve any such matters;
- (m) **(despatch Scheme Booklet)** despatch a copy of the Scheme Booklet to each Invictus Shareholder and Scheme Optionholder and to all other persons entitled to receive notice of the Scheme Meetings in accordance with the orders made by the Court under section 411(1) of the Corporations Act;
- (n) **(inform shareholders of relevant post-Scheme Booklet information)** if it becomes aware of any further or new information after the date of despatch of the Scheme Booklet which is material for disclosure to Invictus Shareholders or Scheme Optionholders in deciding whether to approve the Share Scheme or the Option Scheme, inform shareholders and optionholders of the information in an appropriate and timely manner, provided that Invictus must

consult with Impact and reasonably consider Impact's views on the form and content of any correspondence with Invictus Shareholders and Scheme Optionholders in relation to such matters;

- (o) **(section 411(17)(b) statement)** if:
  - (i) a resolution in favour of the Share Scheme passed by the required majority of Invictus Shareholders under section 411(4)(a)(ii) of the Corporations Act is obtained, apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Share Scheme; and
  - (ii) a resolution in favour of the Option Scheme passed by the required majority of Scheme Optionholders under section 411(4)(a)(ii) of the Corporations Act is obtained, and subject to the condition in clause 2.4(k) being satisfied, apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Option Scheme;
- (p) **(apply for Court approval of Share Scheme)** subject to satisfaction or waiver of all Conditions in clause 2.2, apply to the Court for orders approving the Share Scheme under section 411(4) of the Corporations Act;
- (q) **(apply for Court approval of Option Scheme)** subject to satisfaction or waiver of all Conditions in clause 2.4, apply to the Court for orders approving the Option Scheme under section 411(4) of the Corporations Act;
- (r) **(Implementation of Share Scheme)** if the Court approves the Share Scheme:
  - (i) immediately notify ASX of the Court order approving the Share Scheme;
  - (ii) promptly lodge an office copy of the Court order with ASIC in accordance with section 411(10) of the Corporations Act;
  - (iii) determine who are the Scheme Shareholders and their entitlements to the Scheme Consideration as at 5.00pm on the Record Date in accordance with the Share Scheme;
  - (iv) in accordance with section 672A of the Corporations Act, direct those of the Invictus Shareholders notified to Invictus by Impact (acting reasonably) in writing to make the disclosures required by section 672B of the Corporations Act and provide the resulting information to Impact within 5 days of its receipt; and
  - (v) register all transfers of Invictus Shares to Impact (once duly executed) on the Implementation Date;
- (s) **(Implementation of Option Scheme)** if the Court approves the Option Scheme:

- (i) immediately notify ASX of the Court order approving the Option Scheme;
  - (ii) promptly lodge an office copy of the Court order with ASIC in accordance with section 411(10) of the Corporations Act;
  - (iii) determine who are the Scheme Optionholders and their entitlements to the Option Scheme Consideration as at 5.00pm on the Record Date in accordance with the Option Scheme;
  - (iv) register all transfers of Invictus Scheme Options to Impact (once duly executed) on the Implementation Date;
- (t) **(register information)** give to Impact (or as it directs) details of the names, registered addresses and holdings of:
- (i) Invictus Shares of every Invictus Shareholder as shown in the Register as at 5.00pm on the Record Date and as at any other time reasonably requested by Impact in such form as Impact may reasonably require; and
  - (ii) Invictus Options of every Scheme Optionholder as shown in the Register as at 5.00pm on the Record Date and as at any other time reasonably requested by Impact;
- (u) **(communications with Invictus Shareholders and Scheme Optionholders)**: participate in, and ensure the Invictus Board participates in, all communications, presentations and other measures reasonably requested by Impact to promote the merits of the Transaction; and
- (v) **(post Implementation board)**: on the Effective Date, Invictus will use its best endeavours to ensure that all directors of Invictus resign save only for (unless otherwise determined by Impact) Michael Jones and Peter Unsworth.

## 7. Impact obligations

Impact must:

- (a) **(assist preparation of Independent Expert's Report)** as expeditiously as practicable, provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation or updating of the Independent Expert's Report;
- (b) **(supply information for Scheme Booklet)** as expeditiously as practicable, supply to Invictus for inclusion in the Scheme Booklet such information regarding Impact which is reasonably required under all applicable law, including all relevant ASIC regulatory guides, to be included in the Scheme Booklet;
- (c) **(supply any further information required)** as expeditiously as practicable, supply to Invictus any further information reasonably required by Invictus before the Meeting Date to ensure that the Impact Material is not misleading or deceptive and contains no material omissions and to enable Invictus to

inform Invictus Shareholders and Scheme Optionholders of any further or new information after the date of despatch of the Scheme Booklet, which is material for disclosure to Invictus Shareholders or Scheme Optionholders in deciding whether to approve the Share Scheme or the Option Scheme;

- (d) **(verify Impact Material)**: verify to Invictus the accuracy of the Impact Material in the Scheme Booklet and consent to the inclusion of that information in the form and context in which it appears;
- (e) **(apply for ASX and ASIC relief)** use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX or ASIC as may be required to facilitate Implementation of the Share Scheme and Option Scheme;
- (f) **(Deed polls)** before the First Court Date, enter into the Share Scheme Deed Poll and the Option Scheme Deed Poll;
- (g) **(representation)** ensure that, if requested by Invictus, Impact is represented at Court hearings convened for the purpose of section 411(4)(b) of the Corporations Act, and, through counsel, undertakes, if requested by the Court, to do all things and take all steps within its power necessary to fulfil its obligations under this Agreement, and the Share Scheme and Option Scheme;
- (h) **(not act inconsistently)** not act in a manner inconsistent with obtaining Court approval for the Share Scheme or the Option Scheme;
- (i) **(maintain ASX listing)** take all reasonable and appropriate steps to maintain Impact's listing on ASX, notwithstanding any suspension of the quotation of Impact Shares, up to and including the Effective Date; and
- (j) **(communications with Invictus Shareholders and Scheme Optionholders)**: participate in, and ensure the appropriate members of Impact senior management participate in, all communications, presentations and other measures reasonably requested by Invictus to promote the merits of the Transaction.

## 8. Exclusivity

### 8.1 No other existing discussions

- (a) Subject to clause 8.1(b), Invictus represents and warrants that it is not, as at the date of this Agreement, in negotiations or discussions in respect of any Alternative Proposal with any other person.
- (b) To the extent that Invictus is in negotiations or discussions in respect of any Alternative Proposal as at the date of this Agreement, Invictus undertakes to terminate those negotiations and discussions within two (2) Business Days following its entry into this Agreement.

### 8.2 No-shop restriction

During the Exclusivity Period, Invictus must ensure that neither it nor its directors, officers or employees or (to the extent that it is reasonably able to influence them) its

associates, agents or advisers directly or indirectly solicit, invite, facilitate, encourage or initiate any enquiries, negotiations or discussions, or communicate 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 an Alternative Proposal.

### **8.3 No-talk restriction**

Subject to clause 8.4, during the Exclusivity Period, Invictus must ensure that neither it nor any of its directors, officers or employees or (to the extent that it is reasonably able to influence them) its associates, agents or advisers negotiates or enters into, continues or participates in negotiations or discussions with any other person regarding an Alternative Proposal, even if:

- (a) the Alternative Proposal was not directly or indirectly solicited, initiated or encouraged by Invictus; or
- (b) the other person has publicly announced its Alternative Proposal.

### **8.4 Exception to no-talk**

The restrictions in clause 8.3 do not apply to the extent that they restrict Invictus from taking or refusing to take any action with respect to a bona fide proposal in relation to an Alternative Proposal (which was not encouraged, solicited or invited, facilitated or initiated in contravention of clause 8.2) provided that the Invictus Board has determined, after receiving written legal advice from its external legal advisers, that failing to respond would in Invictus' reasonable opinion (acting in good faith) be likely to constitute a breach of Invictus' directors fiduciary or statutory duties or could reasonably lead to a contravention of the law.

### **8.5 Disclosure of Alternative Proposal**

During the Exclusivity Period, Invictus must promptly notify Impact in writing of:

- (a) any approach, inquiry or proposal made to, and any attempt to initiate negotiations or discussions with Invictus or any of its representatives with respect to any bona fide Alternative Proposal (whether unsolicited or otherwise);
- (b) any request for information relating to Invictus or any of their businesses or operations or any request for access to Invictus' books or records, which Invictus has reasonable grounds to suspect may relate to a current or future Alternative Proposal,

which notice must include reasonable details of the applicable matter (including reasonable details of the Alternative Proposal made by the person making the approach (including the identity of that person and all material terms of the Alternative Proposal)).

### **8.6 Fiduciary obligations in relation to clause 8.5**

Invictus is not required to comply with its obligations under clause 8.5 in any particular case to the extent that compliance with clause 8.5 would, or would be reasonably likely to, constitute, in the opinion of the Invictus Board, based on written

legal advice from its external legal advisers, a breach of any of the legal and fiduciary obligations of the directors of Invictus.

## **8.7 Announcement of a Superior Proposal**

Nothing in this clause prevents or restricts Invictus making any Announcement in respect of any Superior Proposal.

## **9. Announcement**

### **9.1 Announcement of Scheme**

Immediately after the execution of this Agreement, Invictus and Impact must issue either a joint or separate public Announcement in agreed terms, including a statement by the Independent Invictus Directors and the Common Directors that, subject to the Independent Expert concluding that the Share Scheme is in the best interests of Invictus Shareholders, they intend to recommend that Invictus Shareholders vote in favour of the Share Scheme subject to no Superior Proposal being made.

### **9.2 Restrictions on Announcements**

Neither party may make an Announcement relating to the subject matter of this Agreement or its termination or make public this Agreement (or any of its terms) unless the Announcement or publication:

- (a) is required by clause 9.1 or any other provision of this Agreement;
- (b) has the prior approval of the other party, such approval not to be unreasonably withheld; or
- (c) is required to be made by any applicable law.

### **9.3 Notice of Announcement**

If a party is required to make an Announcement under clause 9.2(c), it must, to the extent practicable without that party breaching any applicable law, give to the other party:

- (a) such notice as is reasonable in the circumstances of its intention to make the Announcement; and
- (b) a draft of the Announcement and an opportunity, which is reasonable in the circumstances, to comment on the contents of the draft Announcement.

## **10. Termination**

### **10.1 When a party may terminate**

Without limiting clause 2, this Agreement may be terminated:

- (a) **(before Relevant Date if Condition cannot be satisfied)** by either party, if, before the Relevant Date, a Condition solely or jointly for its benefit cannot be satisfied and is not waived by the time required in this Agreement for it to be satisfied or waived;
- (b) **(after Relevant Date if Condition has not been satisfied)** by either party, if, after the Relevant Date applicable to a Condition solely or jointly for its benefit, that Condition has not been satisfied or waived at that time;
- (c) **(after Sunset Date)** subject to clause 2.8, by either party, if the Effective Date has not occurred by the Sunset Date;
- (d) **(termination for breach)** before the Second Court Date:
  - (i) by Impact – if Invictus is in breach of this Agreement (including a breach of a representation or warranty under clause 11) and that breach is material and is not remedied by Invictus within 5 Business Days (or such shorter period ending on the Second Court Date) of Invictus receiving notice from Impact of the details of the breach and its intention to terminate; and
  - (ii) by Invictus – if Impact is in breach of this Agreement (including a representation or warranty under clause 11) and that breach is material and is not remedied by Impact within 5 Business Days (or such shorter period ending on the Second Court Date) of Impact receiving notice from Invictus of the details of the breach and its intention to terminate,

by giving notice in writing to the other party provided that neither party will be entitled to terminate this Agreement for a breach of a representation or warranty under clause 11 to the extent that the facts, matters and circumstances giving rise to the breach:

- (i) are disclosed in this Agreement;
- (ii) are within the knowledge of the Common Directors; or
- (iii) have been fully and fairly disclosed to the other party prior to the date of this Agreement.

## 10.2 Obligations on termination

- (a) If a party terminates this Agreement under clause 10.1:
  - (i) all obligations of the parties under this Agreement, other than under this clause 10, clause 9 (**Announcement**), clause 12 (**Release**), clause 14 (**Notices**), immediately cease to be of further force or effect;
  - (ii) termination of this Agreement will be the sole remedy available to either party in respect of each and every breach of this Agreement; and

- (iii) neither party will have any liability or obligation to the other party for any damage, loss, cost, fees, reimbursement, liability or expense of any kind under or in connection with this Agreement.

## 11. Representation and warranties

### 11.1 Mutual representations and warranties

Each party represents and warrants to the other party that:

- (a) **(status)** it is a company limited by shares and is validly existing under relevant law;
- (b) **(power)** it has full legal capacity and power to:
  - (i) own its property and to carry on its business; and
  - (ii) enter into this Agreement and to carry out the transactions that this Agreement contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates;
- (d) **(Authorisations)** subject to obtaining those Authorisations contemplated under clauses 2.2(e), 2.2(h) and 2.2(m), it holds each Authorisation that is necessary or desirable to:
  - (i) enable it to execute this Agreement properly and to carry out the transactions that this Agreement contemplates;
  - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
  - (iii) enable it to carry on its business properly,

and it is complying in all material respects with any conditions to which any Authorisation is subject;
- (e) **(Agreement effective)** this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (f) **(no contravention)** neither its execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates, does or will contravene:
  - (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) any material Authorisation;
  - (iii) any undertaking or instrument binding on it or any of its property; or

- (iv) its constitution;
- (g) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to its knowledge, threatened which, if adversely decided, could have a material adverse effect on it;
- (h) **(no Insolvency Event)** it is not affected by an Insolvency Event; and
- (i) **(not representative)** it is not entering into this Agreement in a representative capacity.

## 11.2 Invictus representations and warranties

Invictus represents and warrants to Impact that:

- (a) **(exchanged information not false or misleading)** so far as the Invictus Board is aware, the information relating to the Business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of Invictus, provided by Invictus to Impact prior to the date of this Agreement in connection with this Transaction, is true and accurate in all material respects as at the date at which it was provided to Impact, and Invictus has not knowingly or recklessly:
  - (i) omitted to disclose information to Impact, the disclosure of which might reasonably be expected to have resulted in Impact not entering into this Agreement, or entering into it on materially different terms;
  - (ii) omitted anything such as to make any part of the information provided to Impact materially false or misleading;
  - (iii) included anything materially false or misleading; or
  - (iv) denied access to requested information with the intention of misleading Impact;
- (b) **(Scheme Booklet not false or misleading)** as at the date of despatch of the Scheme Booklet, the Scheme Booklet (other than the Impact Material) will not contain any material statement which is false or misleading (including because of any material omission);
- (c) **(complied with applicable law)** so far as the Invictus Board is aware, Invictus has complied with all applicable laws, to the extent that any instance of non-compliance, individually or in aggregate, could reasonably be expected to be a Material Adverse Change in relation to Invictus;
- (d) **(Invictus projects)** the title to the tenements held by Invictus or a Subsidiary of Invictus in both Turkey and Australia are beneficially owned by Invictus or a Subsidiary of Invictus, free from encumbrances and are in good standing;
- (e) **(continuous disclosure)** Invictus has complied in all material respects with the continuous disclosure obligations under the Listing Rules and is not

withholding any information pursuant to an exception in Listing Rule 3.1A (save in respect of the Share Scheme and the Option Scheme);

- (f) **(no other approvals necessary)** it is not aware of any consents, approvals or other acts by a Government Agency that are necessary to effect Implementation, other than Impact providing a statutory notification of the Transaction to the Treasury under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) if required to do so;
- (g) **(no default)** Invictus is not in default under any document or agreement binding on it or its assets and nothing has occurred which is, or would, with the giving of notice or lapse of time or both, constitute, an event of default, prepayment event or similar event under any such document or agreement, which individually or in aggregate could reasonably be expected to be a Material Adverse Change in relation to Invictus;
- (h) **(termination events)** Invictus is not a party to a Material Contract under which any of the other parties may take a step unfavourable to Invictus (such as to terminate or suspend the agreement or arrangement or to require a payment or the adoption of less favourable terms) because of any change in the control of Invictus, any transaction contemplated by this Agreement or compliance with any provision of this Agreement; and
- (i) **(Schedule 1 accurately details Invictus capital)** Schedule 1 accurately records the total number and details of Invictus Shares and Invictus Options.

### 11.3 Impact representations and warranties

Impact represents and warrants to Invictus that:

- (a) **(exchanged information not false or misleading)** so far as the Impact Board is aware, the information relating to the Business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of Impact, provided by Impact to Invictus prior to the date of this Agreement in connection with this Transaction, is true and accurate in all material respects as at the date at which it was provided to Invictus, and Impact has not knowingly or recklessly:
  - (i) omitted to disclose information to Invictus, the disclosure of which might reasonably be expected to have resulted in Invictus not entering into this Agreement, or entering into it on materially different terms;
  - (ii) omitted anything such as to make any part of the information provided to Invictus materially false or misleading;
  - (iii) included anything materially false or misleading; or
  - (iv) denied access to requested information with the intention of misleading Invictus;
- (b) **(Impact Material not false or misleading)** the Impact Material as at the date of despatch of the Scheme Booklet will not contain any material statement which is false or misleading (including because of any material omission);

- (c) **(complied with applicable law)** so far as the Impact Board is aware, Impact has complied with all applicable laws to the extent that any instance of non-compliance individually or in aggregate, could reasonably be expected to be a Material Adverse Change in relation to Impact;
- (d) **(Impact projects)** the title to the tenements held by Impact or a Subsidiary of Impact in both Botswana and Australia are legally and beneficially owned by Impact or a Subsidiary of Impact, free from encumbrances and are in good standing;
- (e) **(continuous disclosure)** Impact has complied in all material respects with the continuous disclosure obligations under the Listing Rules and is not withholding any information pursuant to an exception in Listing Rule 3.1A (save in respect of the Share Scheme and the Option Scheme);
- (f) **(no other approvals necessary)** it is not aware of any consents, approvals or other acts by a Government Agency that are necessary to effect Implementation, other than Impact providing a statutory notification of the Transaction to the Treasury under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) if required to do so;
- (g) **(no default)** Impact is not in default under any document or agreement binding on it or its assets and nothing has occurred which is or would, with the giving of notice or lapse of time or both, constitute an event of default, prepayment event or similar event under any such document or agreement, which individually or in aggregate could reasonably be expected to be a Material Adverse Change in relation to Impact;
- (h) **(termination events)** Impact is not a party to a Material Contract under which any of the other parties may take a step unfavourable to Impact (such as to terminate or suspend the agreement or arrangement or to require a payment or the adoption of less favourable terms) because of any change in the control of Impact, any transaction contemplated by this Agreement or compliance with any provision of this Agreement; and
- (i) **(Schedule 2 accurately details Impact capital)** Schedule 2 accurately records the total number and details of Impact Shares and Impact Options.

#### 11.4 No representations made on economic or future matters

Neither Invictus nor Impact makes any representation or warranty in relation to the achievability of:

- (a) any economic, fiscal or other interpretations or evaluations by Invictus or Impact; or
- (b) future matters, including future or forecast costs, prices, revenues or profits.

#### 11.5 Reliance on representations and warranties

Each party acknowledges that the other party has executed this Agreement and agreed to take part in the transactions that this Agreement contemplates in reliance on the representations and warranties that are made in clauses 11.1, 11.2 and 11.3.

### 11.6 When warranties are given

Each representation and warranty given or made under clauses 11.1, 11.2 and 11.3 is given:

- (a) as at the date of this Agreement; and
- (b) as at 8.00am on the Second Court Date; and
- (c) at any other date at which the representation or warranty is expressed to be given,

as a separate warranty.

### 12. Release

- (a) **(Officers not liable)** Subject to section 199A of the Corporations Act and clause 12(b), no officer or employee, or past officer or employee, of a party will be liable for anything done or purported to be done in connection with implementation of this Agreement, the Share Scheme and the Option Scheme or any one of them in good faith.
- (b) **(Except wilful misconduct)** Clause 12(a) does not exclude an officer or employee, or past officer or employee, from any liability which may arise from wilful misconduct or a grossly negligent act or omission on the part of the person.
- (c) **(Benefit held for officers and employees)** Each party receives and holds the benefit of this release, to the extent that it relates to its officers and employees and its past officers and employees as agent for them.

### 13. GST

#### 13.1 GST interpretation

In this Agreement:

- (a) any reference in this clause 12 to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined or used in that Act;
- (b) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled; and
- (c) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

### **13.2 GST payable in addition to consideration for taxable supplies**

A recipient of a taxable supply made under or in connection with this Agreement must:

- (a) pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply, without deduction or set-off of any other amount; and
- (b) make the payment either when the consideration for the taxable supply is payable, or upon demand.

### **13.3 Tax invoice**

The supplier must issue a tax invoice to the recipient for any supply for which the supplier may recover GST from the recipient under or in connection with this Agreement.

### **13.4 Consideration exclusive of GST**

Any consideration or payment obligation in this Agreement is exclusive of GST unless stated otherwise.

## **14. Notices**

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

- (a) must be in writing;
- (b) must be addressed to the address notified by the recipient to the other party from time to time. As at the date of this Agreement, the parties' respective addresses are the addresses as set out at page 1 of this Agreement;
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for or any attorney, director, secretary or authorised agent of that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee in accordance with clause (c); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting;
  - (iii) (in the case of facsimile) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the facsimile machine from which it was sent or other verification from the time of sending; and

(iv) (in the case of delivery by hand) on delivery,

but if the communication would, on the application of clauses (i) to (iv), be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

## **15. Amendment and assignment**

### **15.1 Amendment**

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

### **15.2 Assignment**

A party cannot:

- (a) assign, novate or otherwise deal with any of its rights or obligations under this Agreement; or
- (b) dispose of, declare a trust over or otherwise create an interest in its rights under this Agreement,

without the prior written consent of the other party.

## **16. General**

### **16.1 Governing law**

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

### **16.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, and any courts competent to determine appeals from any of those courts, with respect to any proceedings that may be brought at any time relating to or in connection with this Agreement; and
- (b) waives any objection that it may now or in the future have to the venue of any proceedings, and any claim that it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.2(a).

### **16.3 Liability for expenses**

- (a) Impact must pay for all stamp duty payable on this Agreement or any instrument or transaction contemplated in or necessary to give effect to this Agreement.

- (b) Each party must pay its own expenses incurred in negotiating, preparing, executing and performing this Agreement and the proposed, attempted or actual implementation of this Agreement, the Share Scheme, the Scheme Booklet and this Agreement.

#### **16.4 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give full effect to this Agreement and the transactions contemplated by this Agreement.

#### **16.5 Continuing obligations**

Any provision of this Agreement remaining to be performed or observed by the parties or having effect after the termination, completion or expiration of this Agreement remains in full force and effect and is binding on the parties and their personal representatives.

#### **16.6 Waiver of rights**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

#### **16.7 No partnership or agency**

Nothing in this Agreement is to be treated as creating a partnership and, except as specifically provided in this Agreement, no party may act as agent of or in any way bind another party to any obligation.

#### **16.8 Indemnities**

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Agreement.

### **16.9 Consents**

Where this Agreement contemplates that a party may agree or consent to something (however it is described), the party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions,

unless this Agreement expressly contemplates otherwise.

### **16.10 Severance and enforceability**

Any provision, or the application of any provision, of this Agreement that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Agreement in that or any other jurisdiction.

### **16.11 No merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction under this Agreement, and survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under this Agreement.

### **16.12 Entire agreement**

To the extent permitted by law, in relation to its subject matter this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

### **16.13 Counterparts**

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

### **16.14 Attorneys**

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

## Schedule 1 – Invictus securities

### 1. Shares

Invictus has 111,335,875 fully paid ordinary shares on issue.

### 2. Options

Invictus has on issue the following options to subscribe for fully paid shares:

Tranche	Expiry Date	Exercise Price	Number
1.	30 November 2015	\$0.25	8,000,000
2.	30 June 2014	\$0.25	6,250,000
3.	30 September 2014	\$0.25	225,000
4.	30 September 2014	\$0.30	225,000
5.	30 November 2015	\$0.10	4,100,000
6.	30 November 2015	\$0.20	6,400,000
7.	30 November 2015	\$0.25	6,400,000
8.	30 November 2016	\$0.15	4,100,000
<b>Total</b>			<b>35,700,000</b>

## Schedule 2 – Impact securities

### 1. Shares

Impact has 371,912,552 fully paid ordinary shares on issue.

### 2. Options

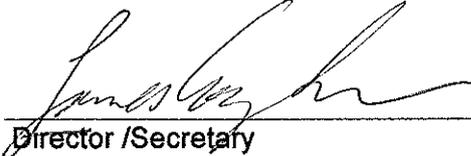
Impact has on issue the following options to subscribe for fully paid shares:

Tranche	Expiry Date	Exercise Price	Number
1.	31 December 2013	\$0.20	150,000
2.	31 December 2013	\$0.25	150,000
3.	31 May 2014	\$0.20	150,000
4.	30 November 2015	\$0.06	15,900,000
5.	30 November 2016	\$0.10	11,900,000
<b>Total</b>			<b>28,250,000</b>

Executed as an agreement

Executed by Impact Minerals Limited )  
ACN 119 062 261 pursuant to section 127 )  
of the Corporations Act )

  
\_\_\_\_\_  
Director

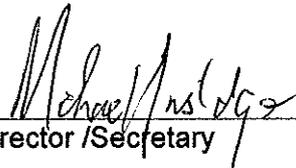
  
\_\_\_\_\_  
Director /Secretary

MICHAEL GRIFFITH JONES  
\_\_\_\_\_  
Full name (please print)

JAMES COOPER JONES  
\_\_\_\_\_  
Full name (please print)

Executed by Invictus Gold Limited )  
ACN 145 891 907 pursuant to section 127 )  
of the Corporations Act )

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director /Secretary

RICHARD JOHN BASHAM  
\_\_\_\_\_  
Full name (please print)

Michael Busbridge  
\_\_\_\_\_  
Full name (please print)

## Annexure 1 - Share Scheme of Arrangement

# Share Scheme of Arrangement

pursuant to Section 411 of the Corporations Act

Invictus Gold Limited  
ACN 145 891 907

and

Each Scheme Shareholder

---

## Table of contents

1.	Definitions and interpretation.....	1
1.1	Definitions.....	1
1.2	Interpretation .....	3
2.	Preliminary .....	5
2.1	Invictus .....	5
2.2	Impact.....	5
2.3	Share Scheme summary .....	6
2.4	Implementation .....	6
3.	Conditions precedent and effectiveness .....	6
3.1	Conditions precedent.....	6
3.2	Certificate .....	7
3.3	Merger Implementation Agreement.....	7
3.4	Sunset Date.....	7
4.	Implementation of the Share Scheme.....	7
4.1	Court order .....	7
4.2	Lodgement with ASIC .....	8
4.3	Transfer of Scheme Shares .....	8
4.4	Consideration under this Share Scheme.....	8
4.5	Joint holders .....	8
4.6	Fractional entitlements.....	8
4.7	Shareholding splitting or division.....	9
4.8	Scheme Shareholders bound.....	9
4.9	Ineligible Foreign Holders .....	10
4.10	Authority given to Invictus .....	11
4.11	Appointment of sole proxy .....	11
5.	Impact's obligations and ancillary matters .....	11
5.1	Invictus notice and Scheme Shareholder consent.....	11
5.2	Provision of Share Scheme Consideration.....	12
5.3	Status of New Impact Shares.....	12
5.4	Deferred settlement trading .....	12
5.5	Appointment of Impact as attorney and agent.....	12
6.	Dealings in Invictus Shares .....	12
6.1	No allotment or issue .....	12
6.2	No dealings after Record Date.....	13
6.3	No registration of transfers.....	13
6.4	Statements of holding .....	13

---

6.5	Maintenance of Share Register.....	13
7.	Quotation of Invictus Shares .....	13
7.1	Suspension of trading .....	13
7.2	Termination of quotation .....	13
8.	General .....	14
8.1	Share Scheme binding.....	14
8.2	Enforcement of Share Scheme Deed Poll.....	14
8.3	Modifications and amendments .....	14
8.4	Accidental omissions and non-receipt of notice.....	14
8.5	Status of Scheme Shares .....	14
8.6	Binding instruction or notification .....	14
8.7	Notices .....	15
8.8	Further obligations .....	15
8.9	No liability .....	15
8.10	Costs and stamp duty .....	15
8.11	Governing law.....	15
8.12	Jurisdiction.....	15

## Share Scheme of Arrangement

Date 22nd August 2013

### Parties

**Invictus Gold Limited** ACN 145 891 907 of 309 Newcastle Street, Northbridge Western Australia 6003 (**Invictus**)

### Each Scheme Shareholder

## 1. Definitions and interpretation

### 1.1 Definitions

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

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

**ASX Operating Rules** means the operating rules of ASX Settlement.

**ASX Settlement** means ASX Settlement Pty Ltd ACN 008 504 532.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth, Western Australia.

**CHESS** means the Clearing House Electronic Sub-register System, for the electronic transfer of securities, operated by ASX Settlement.

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

**Court** means the Federal Court of Australia or the Supreme Court of Western Australia or such other court of competent jurisdiction as agreed by Impact and Invictus in writing.

**Duty** means a tax on a dutiable transaction under the *Duties Act 2008 (WA)* or a similar tax imposed in another jurisdiction, including a jurisdiction outside Australia.

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

**Effective** means, when used in relation to the Share Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Share Scheme.

**Impact** means Impact Minerals Limited ACN 119 062 261.

**Impact Option** means an option to subscribe for an Impact Share.

**Impact Register** means the register of members of Impact maintained by Computershare Limited and Impact Registry has a corresponding meaning.

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

**Implementation Date** means the fifth Business Day after the Record Date.

**Ineligible Foreign Holder** means a Scheme Shareholder whose address in the Share Register is in a jurisdiction outside Australia and its external territories and New Zealand, except where Impact and Invictus are reasonably satisfied that the issue of New Impact Shares in that jurisdiction under the Share Scheme would be neither prohibited by law nor unduly onerous.

**Invictus** means Invictus Gold Limited ACN 145 891 907.

**Invictus Option** means an option to subscribe for an Invictus Share.

**Invictus Share** means a fully paid ordinary share in Invictus.

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

**Merger Implementation Agreement** means the merger implementation agreement dated <date> 2013 between Invictus and Impact.

**New Impact Shares** means those Impact Shares to be issued (as Scheme Consideration) to (or in respect of) Scheme Shareholders as consideration for their Scheme Shares.

**Option Scheme Meeting** means the meeting of Scheme Optionholders, to be convened by the Court pursuant to section 411(1) of the Corporations Act, to consider and vote on the Option Scheme.

**Option Scheme** or **Option Scheme of Arrangement** means the scheme of arrangement under Part 5.1 of the Corporations Act between Invictus and the Scheme Optionholders subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Impact and Invictus.

**Option Scheme Record Date** means the "Record Date" as defined in the Option Scheme.

**Record Date** means 5.00pm on the fifth Business Day after the Effective Date, or any other date agreed by Invictus and Impact.

**Registered Address** means, in relation to a Scheme Shareholder, the address of the Scheme Shareholder shown in the Share Register.

**Sale Agent** means the person chosen by Invictus and Impact and (if necessary) approved by ASIC to sell the New Impact Shares that are attributable to Ineligible Foreign Holders under the terms of this Share Scheme (or any nominee of such person).

**Scheme Options** means the 8,000,000 Invictus Options on issue and quoted on ASX, with an exercise price of \$0.25 each and expiring on 30 November 2015.

**Scheme Optionholder** means each person recorded in the register of optionholders of Invictus as a holder of Scheme Options as at the Option Scheme Record Date.

**Scheme Shareholder** means each person who is registered in the Share Register as a holder of Scheme Shares as at the Record Date.

**Scheme Shares** means the Invictus Shares on issue as at the Record Date.

**Second Court Date** means the first day of the Second Court Hearing, or if the application at such hearing is adjourned or subject to an appeal for any reason, the first day on which the adjourned or appealed application is heard.

**Second Court Hearing** means the hearing of the Court of the application for an order pursuant to section 411(4)(b) of the Corporations Act approving this Share Scheme.

**Share Register** means the register of Invictus members maintained by Computershare Investor Services Pty Limited and Share Registry has a corresponding meaning.

**Share Scheme Consideration** means the consideration to be provided by Impact to Scheme Shareholders for the transfer of their Scheme Shares under the terms of the Share Scheme, being 5 New Impact Shares for every 4 Scheme Shares.

**Share Scheme Deed Poll** means the deed poll executed by Impact on or about <date> 2013 in favour of each Scheme Shareholder as set out in Annexure A.

**Share Scheme Meeting** means the meeting of Scheme Shareholders, to be convened by the Court pursuant to section 411(1) of the Corporations Act, to consider and vote on the Share Scheme.

**Share Scheme or Share Scheme of Arrangement** means the scheme of arrangement under Part 5.1 of the Corporations Act recorded in this document subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act.

**Shareholder** means a holder of an Invictus Share.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of Division 6 of Part 1.2 of the Corporations Act or is a subsidiary or otherwise controlled by the first within the meaning of any approved accounting standard.

**Sunset Date** means 31 December 2013.

## 1.2 Interpretation

In this Share Scheme:

- (a) headings are for convenience only and do not affect interpretation; and

unless the context indicates otherwise:

- (b) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to:
  - (i) a clause or schedule is a reference to a clause or schedule of this Scheme;
  - (ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - (iii) a document in writing includes a document produced by means of typewriting, printing, lithography, photography and other modes of representing or reproducing words in a visible form, recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
  - (iv) a document (including this Scheme) includes a reference to all schedules, exhibits, attachments and annexures to it, and is to that document as varied, novated, ratified or replaced from time to time;
  - (v) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
  - (vi) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a day is to a period of time commencing at midnight and ending twenty four (24) hours later;
- (f) a reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act;
- (g) the word "**includes**" in any form is not a word of limitation;
- (h) a reference to "**information**" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programmes, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;

- (i) the words “**entity**” and “**officer**” have the same meaning as in section 9 of the Corporations Act, and “control” has the same meaning as in section 50AA of the Corporations Act;
- (j) time is a reference to time in Perth, Western Australia;
- (k) a reference to “\$” or “**dollar**” is to Australian currency;
- (l) a contravention of or a breach of any of the representations and warranties includes any of the representations and warranties not being complete, true and correct;
- (m) each representation and warranty is a separate representation and warranty, and its meaning is not affected by any other representation or warranty;
- (n) a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (o) when a day on or by which anything to be done is not a Business Day, that thing may be done on or by the next Business Day.

## **2. Preliminary**

### **2.1 Invictus**

- (a) Invictus is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of this document:
  - (i) 111,335,875 Invictus Shares were on issue;
  - (ii) 8,000,000 listed Invictus Options were on issue; and
  - (iii) 27,700,000 unlisted Invictus Options were on issue.
- (c) Invictus has been admitted to the official list of ASX and its shares have been granted official quotation.

### **2.2 Impact**

- (a) Impact is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of this document:
  - (i) 371,912,552 Impact Shares were on issue; and
  - (ii) 28,250,000 Impact Options were on issue.
- (c) Impact has been admitted to the official list of ASX and its shares have been granted official quotation.

## 2.3 Share Scheme summary

If this Share Scheme becomes Effective, then:

- (a) in consideration for the transfer of each Scheme Share to Impact, Impact will be obliged to provide the Share Scheme Consideration to each Scheme Shareholder (other than Ineligible Foreign Holders who will be dealt with in accordance with clause 4.9);
- (b) each Scheme Shareholder will be bound to transfer their Scheme Shares, and all rights and obligations attaching to them as at the Implementation Date, to Impact and Invictus will enter Impact's name and registered address in the Share Register as the holder of all Scheme Shares; and
- (c) on the transfer of all Scheme Shares to Impact, Invictus will become a wholly owned Subsidiary of Impact.

## 2.4 Implementation

- (a) Impact has entered into the Share Scheme Deed Poll pursuant to which it has, among other things, covenanted to carry out its obligations (including its obligation to provide the Share Scheme Consideration, subject to clause 4.9 of this Share Scheme, to Scheme Shareholders) as contemplated by this Share Scheme.
- (b) Invictus and Impact have also entered into the Merger Implementation Agreement, which sets out the terms on which Invictus and Impact have agreed to implement the Scheme.

## 3. Conditions precedent and effectiveness

### 3.1 Conditions precedent

The conditions precedent to this Share Scheme becoming Effective are:

- (a) **(Share Scheme approval)** this Share Scheme being approved, in accordance with section 411(4)(a) of the Corporations Act, at the Share Scheme Meeting;
- (b) **(Option Scheme approval)** the Option Scheme being approved, in accordance with section 411(4)(a) of the Corporations Act, at the Option Scheme Meeting;
- (c) **(Conditions precedent to Merger Implementation Agreement)** all of the conditions set out in clause 2.2 of the Merger Implementation Agreement being satisfied or waived in accordance with the terms of the Merger Implementation Agreement by the times indicated in the Merger Implementation Agreement;
- (d) **(No termination)** the Merger Implementation Agreement or Share Scheme Deed Poll not being terminated prior to 8.00am on the Second Court Date;

- (e) **(Court approval)** the approval by the Court of this Share Scheme, pursuant to section 411(4)(b) of the Corporations Act, being given;
- (f) **(Court conditions)** such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Share Scheme as are acceptable to Impact and Invictus being satisfied;
- (g) **(Court approval of Option Scheme)** the approval by the Court of the Option Scheme, pursuant to section 411(4)(b) of the Corporations Act, being given; and
- (h) **(Court conditions for Option Scheme)** such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Option Scheme as are acceptable to Impact and Invictus being satisfied.

The satisfaction of each of paragraphs (a), (c), (d), (e) and (f) of this clause 3.1 is a condition precedent to the operation of this Share Scheme and this Share Scheme will be of no effect unless these conditions precedent are satisfied. The conditions precedent in paragraphs 3.1(b), (g) and (h) may be waived in Impact's absolute discretion and this Share Scheme will be of no effect unless these conditions precedent are satisfied or waived.

### **3.2 Certificate**

Impact and Invictus will provide to the Court at the Second Court Hearing a certificate confirming whether or not all of the conditions in clause 2.2 of the Merger Implementation Agreement (other than those set out in clauses 2.2(e) and (f) of the Merger Implementation Agreement) have been satisfied or waived in accordance with the terms of the Merger Implementation Agreement.

### **3.3 Merger Implementation Agreement**

If the Merger Implementation Agreement is terminated in accordance with its terms prior to 8.00am on the Second Court Date, Impact and Invictus are each immediately released from any further obligation to take steps to implement the Share Scheme.

### **3.4 Sunset Date**

This Share Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the Sunset Date.

## **4. Implementation of the Share Scheme**

### **4.1 Court order**

This Share Scheme will become binding on Invictus and each Scheme Shareholder if and only if the Court makes an order under section 411(4)(b) of the Corporations Act approving this Share Scheme and that order becomes effective under section 411(10) of the Corporations Act.

#### 4.2 Lodgement with ASIC

Invictus will lodge with ASIC an office copy of the order of the Court made under section 411(4)(b) of the Corporations Act approving this Share Scheme as soon as practicable and, in any event, by 5.00pm on the first Business Day after:

- (a) the Court approves the Share Scheme; or
- (b) the date of satisfaction of the conditions precedent referred to in clause 3.1 of this Share Scheme,

whichever is the later.

#### 4.3 Transfer of Scheme Shares

Subject to clause 4.4, all of the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares) will be transferred to Impact on the Implementation Date (without the need for any further act by a Scheme Shareholder other than acts performed by Invictus pursuant to the authority in clause 4.10) by Invictus effecting a valid transfer or transfers under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) Invictus executing and delivering to Impact, pursuant to the authority in clause 4.10, a valid share transfer form or forms (which may be a master transfer) to transfer all of the Scheme Shares to Impact;
- (b) Impact executing and delivering that share transfer form or those forms to Invictus; and
- (c) Invictus, immediately upon receipt of the executed share transfer form or forms, entering the name and address of Impact in the Share Register as the holder of all Scheme Shares.

#### 4.4 Consideration under this Share Scheme

Subject to and in accordance with the other terms and conditions of this Share Scheme, in consideration for the transfer of each Scheme Share to Impact, Impact will on the Implementation Date issue to each Scheme Shareholder the number of New Impact Shares as are due to that Scheme Shareholder as Share Scheme Consideration.

#### 4.5 Joint holders

In the case of Scheme Shares held in joint names, any certificates or uncertificated holding statements for New Impact Shares to be issued to Share Scheme Shareholders will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the Share Register on the Record Date.

#### 4.6 Fractional entitlements

Where the calculation of the total number of New Impact Shares to be issued to (or in respect of) a particular Share Scheme Shareholder would result in a fractional entitlement to a New Impact Share, then, any such fractional entitlement:

- (a) if to less than 0.5 of a New Impact Share, will be rounded down to the nearest whole number of New Impact Shares; and
- (b) if to 0.5 or more of a New Impact Share, will be rounded up to the nearest whole number of New Impact Shares,

provided that if a Share Scheme Shareholder holds less than 4 Invictus Shares on the Record Date, Impact will issue that Share Scheme Shareholder 1.25 New Impact Shares for every Scheme Share held (rounded up or down to the nearest whole number of New Impact Shares).

#### **4.7 Shareholding splitting or division**

- (a) If Impact is of the reasonable opinion that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.6 have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Impact may give notice to those Scheme Shareholders:
  - (i) setting out their names and Registered Addresses;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of this Share Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of this Share Scheme, be taken to hold no Scheme Shares.

- (b) Impact, in complying with the other provisions of this Share Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Share Scheme.

#### **4.8 Scheme Shareholders bound**

Each Scheme Shareholder who is to receive New Impact Shares under this Share Scheme agrees (for all purposes including section 231 of the Corporations Act) to:

- (a) become a member of Impact and to accept the New Impact Shares issued to them under this Share Scheme subject to, and to be bound by, Impact's constitution and other constituent documents; and
- (b) have their name and address entered into the Impact Register.

#### 4.9 Ineligible Foreign Holders

- (a) Impact will be under no obligation under this Share Scheme to issue, and will not issue, any New Impact Shares to Ineligible Foreign Holders, and instead:
- (i) all the New Impact Shares which would otherwise be required to be issued to any Ineligible Foreign Holder under the Share Scheme, if they were eligible to receive them, will be issued to the Sale Agent;
  - (ii) Impact will procure that, as soon as reasonably practicable (and in any event not more than 15 Business Days after the Implementation Date), the Sale Agent sells on ASX all of the New Impact Shares issued to the Sale Agent pursuant to clause 4.9(a)(i) in such manner, at such price and on such other terms as the Sale Agent determines in good faith (and at the risk of the Ineligible Foreign Holders), and remits to Impact the proceeds of sale (after deducting any applicable brokerage and other selling costs, taxes and charges) (**Proceeds**); and
  - (iii) Impact will pay to each Ineligible Foreign Holder such fraction of the Proceeds as is equal to the number of New Impact Shares which would have been issued to that Ineligible Foreign Holder (if they were eligible to receive New Impact Shares) divided by the total number of New Impact Shares issued to the Sale Agent under clause 4.9(a)(i), promptly after the last sale of New Impact Shares by the Sale Agent,
- in full satisfaction of Impact's obligations to those Ineligible Foreign Holders under the Share Scheme in respect of the Share Scheme Consideration.
- (b) Impact will pay the relevant fraction of the Proceeds to each Ineligible Foreign Holder by either:
- (i) dispatching, or procuring the dispatch, to that Ineligible Foreign Holder by prepaid post to that Ineligible Foreign Holder's Registered Address (at the Record Date), a cheque in the name of that Ineligible Foreign Holder; or
  - (ii) making a deposit in an account with any ADI (as defined in the Banking Act 1959 (Cth)) in Australia notified by that Ineligible Foreign Holder to Invictus (or the Share Registry) and recorded in or for the purposes of the Share Register at the Record Date,
- for the relevant amount, with that amount being denominated in Australian dollars.
- (c) Each Ineligible Foreign Holder appoints Invictus as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Holders under the Corporations Act.

#### 4.10 Authority given to Invictus

Each Scheme Shareholder will be deemed (without the need for any further act) to have irrevocably authorised Invictus (and each of its directors and officers, jointly and severally) as agent and attorney to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary to implement and give full effect to this Share Scheme and the transactions contemplated by it, including (without limitation):

- (a) executing a proper instrument of transfer (including for the purposes of section 1071B of the Corporations Act) of their Scheme Shares in favour of Impact, which may be a master transfer of some or all Scheme Shares; and
- (b) where Scheme Shares are held in a CHESS holding, causing a message to be transmitted to ASX Settlement in accordance with the ASX Operating Rules to transfer the Scheme Shares held by the Scheme Shareholder from the CHESS sub-register to the issuer sponsored sub-register operated by Invictus and subsequently completing a proper instrument of transfer under paragraph (a) above.

#### 4.11 Appointment of sole proxy

Upon the Share Scheme Consideration being issued by Impact pursuant to this clause 4 and until Invictus registers Impact as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Impact as attorney and agent (and directed Impact in such capacity) to appoint the chairman of Impact as its sole proxy and, where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 4.11(a)); and
- (b) must take all other actions in the capacity of a registered holder of Scheme Shares as Impact reasonably directs.

### 5. Impact's obligations and ancillary matters

#### 5.1 Invictus notice and Scheme Shareholder consent

- (a) As soon as practicable after the Record Date, and in any event at least 2 Business Days before the Implementation Date, Invictus will give to Impact (or procure that Impact be given) details of the names and addresses shown in the Share Register of all Scheme Shareholders and the number of Scheme Shares held by each of them at the Record Date (in such form as may be reasonably requested by Impact).
- (b) Scheme Shareholders agree that any information referred to in clause 5.1(a) may be disclosed to Impact, Impact's advisors, Invictus' advisors and other service providers (including the Impact Registry) to the extent necessary to effect the Share Scheme.

## 5.2 Provision of Share Scheme Consideration

Subject to clauses 4.6, 4.7 and 4.9, Impact will provide to each Scheme Shareholder the Share Scheme Consideration to which that Scheme Shareholder is entitled by:

- (a) on the Implementation Date, issuing to that Scheme Shareholder 5 New Impact Shares for every 4 Scheme Shares registered in the name of that Scheme Shareholder in the Share Register at the Record Date, which obligation will be satisfied by causing the name and Registered Address (at the Record Date) of that Scheme Shareholder to be entered into the Impact Register as the holder of the New Impact Shares issued to that Scheme Shareholder; and
- (b) within 5 Business Days after the Implementation Date, procuring the dispatch to that Scheme Shareholder of a certificate or uncertificated holding statement in the name of that Scheme Shareholder relating to the number of New Impact Shares issued to that Scheme Shareholder.

## 5.3 Status of New Impact Shares

The New Impact Shares to be issued in accordance with this Share Scheme will:

- (a) be validly issued;
- (b) be fully paid; and
- (c) rank equally in all respects with all other Impact Shares then on issue (other than in respect of any dividend already declared and not yet paid by Impact, where the record date for entitlement to that dividend occurred prior to the Implementation Date).

## 5.4 Deferred settlement trading

Impact will use its best endeavours to ensure that the New Impact Shares are quoted on ASX as soon as practicable after the Effective Date, initially on a deferred settlement basis and thereafter on an ordinary settlement basis.

## 5.5 Appointment of Impact as attorney and agent

Each Scheme Shareholder, without need for any further act, irrevocably appoints Impact and each of its directors and officers, jointly and severally, as that Scheme Shareholder's attorney and agent for the purpose of executing any form of application required for New Impact Shares to be issued to that Scheme Shareholder under the Share Scheme.

## 6. Dealings in Invictus Shares

### 6.1 No allotment or issue

No Invictus Shares will be allotted or issued by Invictus after the Effective Date and before the Implementation Date.

## **6.2 No dealings after Record Date**

Where this Share Scheme becomes binding as provided by clause 4.1, for the purposes of determining who are Scheme Shareholders, dealings in Invictus Shares will only be recognised if:

- (a) in the case of dealings of a type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the Invictus Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Share Registry by the Record Date.

Invictus will register registrable transfers or transmission applications of the kind referred to in clause 6.2(b) on or before the Record Date.

## **6.3 No registration of transfers**

Invictus will not accept for registration nor recognise for any purpose any transmission application, transfer or other dealing in respect of Scheme Shares received after the Record Date, other than a transfer to Impact in accordance with this Share Scheme.

## **6.4 Statements of holding**

All statements of holdings (or certificates) for Scheme Shares will cease to have any effect from the Record Date as documents of title in respect of such Scheme Shares. As from the Record Date, each entry current at that date on the Share Register relating to Scheme Shares will cease to be of any effect other than as evidence of entitlement to the Share Scheme Consideration.

## **6.5 Maintenance of Share Register**

In order to determine entitlements to the Share Scheme Consideration, Invictus will maintain, or procure the maintenance of, the Share Register in accordance with this clause 6 until the Share Scheme Consideration has been provided to Scheme Shareholders, and the Share Register in this form will solely determine entitlements to the Share Scheme Consideration.

## **7. Quotation of Invictus Shares**

### **7.1 Suspension of trading**

Invictus will apply to ASX for suspension of trading of Invictus Shares on ASX after the close of trading on ASX on the Effective Date. It is anticipated that suspension of trading in Invictus Shares will occur from the commencement of the Business Day following the day on which Invictus notifies ASX of this Share Scheme becoming Effective.

### **7.2 Termination of quotation**

After the Implementation Date, Invictus will apply for termination of the official quotation of Invictus Shares and to have itself removed from the official list of ASX.

## **8. General**

### **8.1 Share Scheme binding**

Each Scheme Shareholder will transfer their Scheme Shares to Impact (together with all rights and entitlements attaching to those Scheme Shares) in accordance with the terms of this Share Scheme and this Share Scheme binds Invictus and all Scheme Shareholders (including those who do not attend the Share Scheme Meeting, do not vote at the Share Scheme Meeting, or vote against this Share Scheme at the Share Scheme Meeting).

### **8.2 Enforcement of Share Scheme Deed Poll**

- (a) Each Scheme Shareholder appoints Invictus as its agent and attorney to enforce the Share Scheme Deed Poll against Impact.
- (b) Invictus undertakes in favour of each Scheme Shareholder to enforce the Share Scheme Deed Poll against Impact on behalf of, and as agent and attorney for, the Scheme Shareholders.

### **8.3 Modifications and amendments**

Invictus may by its counsel or solicitors (but only with the prior consent of Impact, which consent may not be unreasonably withheld or delayed) consent on behalf of all persons concerned (including the Scheme Shareholders) to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of this Share Scheme.

### **8.4 Accidental omissions and non-receipt of notice**

The accidental omission to give notice of the Share Scheme Meeting to any holder of Invictus Shares or the non-receipt of such a notice by any holder of Invictus Shares will not, unless so ordered by the Court, invalidate the Share Scheme Meeting or the proceedings at the Share Scheme Meeting.

### **8.5 Status of Scheme Shares**

- (a) Each Scheme Shareholder is deemed to have warranted to Invictus, in its own right and for the benefit of Impact, that all of their Scheme Shares which are transferred to Impact under the Share Scheme will, at the date of transfer of them to Impact, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares to Impact.
- (b) Impact will be beneficially entitled to the Scheme Shares transferred to it under this Share Scheme pending registration by Invictus of the name and registered address of Impact in the Share Register as the holder of the Scheme Shares.

### **8.6 Binding instruction or notification**

Except for a Scheme Shareholder's tax file number, any binding instruction or notification from a Scheme Shareholder to Invictus relating to Scheme Shares at the

Record Date (including any instructions relating to the payment of dividends or communications) will, from the Record Date, be deemed (except to the extent inconsistent with the other provisions of this Share Scheme or as determined otherwise by Impact in its sole discretion) to be a similarly binding instruction or notification to Impact in respect of the New Impact Shares issued to the Scheme Shareholder until such time as it is revoked or amended in writing addressed to Impact at the Impact Registry.

## **8.7 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in this Share Scheme is sent by post:

- (a) to Invictus, it will not be deemed to be received in the ordinary course of post or on a day other than the date (if any) on which it was actually received at Invictus' registered office or the Share Registry; and
- (b) to a Scheme Shareholder, it will be sent by ordinary pre-paid post (or by airmail in the case of Scheme Shareholders with overseas Registered Addresses) or courier to the Registered Address of the relevant Scheme Shareholder at the Record Date, or delivered to that address by any other means at no cost to the recipient.

## **8.8 Further obligations**

Invictus and Impact must each execute all deeds and other documents (including transfers) and do all acts and things as may be necessary or expedient on its part to implement and give full effect to this Share Scheme in accordance with its terms.

## **8.9 No liability**

Neither Invictus nor Impact, nor any of their respective officers, is liable to Scheme Shareholders for anything done or for anything omitted to be done in performance of this Share Scheme in good faith.

## **8.10 Costs and stamp duty**

Invictus will pay the costs of the Share Scheme other than duty. All duty (if any) payable and any related fines, interest and penalties in connection with the transfer of the Scheme Shares to Impact will be payable by Impact.

## **8.11 Governing law**

This Share Scheme is governed by and must be construed according to the laws applying in Western Australia.

## **8.12 Jurisdiction**

Invictus, Scheme Shareholders and Impact each submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waive any right they might have to claim that those courts are an inconvenient forum.



## Annexure A – Share Scheme Deed Poll

# Share Scheme Deed Poll

Impact Minerals Limited  
ACN 119 062 261

Date

22 August

2013

## Parties

**Impact Minerals Limited ACN 119 062 261** of 309 Newcastle Street, Northbridge, Western Australia, 6003 (**Impact**)

In favour of each holder of fully paid ordinary shares in the capital of Invictus Gold Limited ACN 145 891 907 (**Invictus**) on issue as at 5.00pm on the Record Date (each a **Scheme Shareholder**)

## Recitals

- A. Impact and Invictus have entered into the Merger Implementation Agreement.
- B. Invictus has agreed in the Merger Implementation Agreement to propose the Share Scheme.
- C. Under the Share Scheme, all Invictus Shares held by Scheme Shareholders will be transferred to Impact for the Share Scheme Consideration.
- D. In accordance with the Merger Implementation Agreement, Impact is entering into this Deed to covenant in favour of the Scheme Shareholders to perform its obligations under the Share Scheme.

## 1. Definitions and interpretation

### 1.1 Definitions

In this Deed, unless the context requires otherwise:

**Deed** means this Share Scheme Deed Poll.

**Merger Implementation Agreement** means the merger implementation agreement between Invictus and Impact dated <date> 2013.

**Share Scheme** means the scheme of arrangement under section 411 of the Corporations Act between Invictus and the Scheme Shareholders, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and approved in writing by Invictus and Impact.

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

## **1.2 Interpretation**

The rules specified in clause 1.2 of the Merger Implementation Agreement apply in interpreting this Deed, unless the context makes it clear that a rule is not intended to apply.

## **1.3 Nature of Share Scheme Deed Poll**

Impact acknowledges that:

- (a) this Deed may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Share Scheme, each Scheme Shareholder irrevocably appoints Invictus and any of Invictus' directors as its agent and attorney, inter alia, to enforce this Deed against Impact.

## **2. Condition precedent and termination**

### **2.1 Condition**

Impact's obligations under clause 3 are subject to the Share Scheme becoming Effective.

### **2.2 Termination**

If the Share Scheme does not become Effective on or before the Sunset Date, or the Merger Implementation Agreement is terminated, Impact's obligations under this Deed will automatically terminate and the terms of this Deed will be of no further force or effect, unless Impact and Invictus otherwise agree in writing.

### **2.3 Consequences of termination**

If this Deed is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Impact is released from its obligations to further perform this Deed except those obligations contained in clause 8.3; and
- (b) each Scheme Shareholder retains any rights, power or remedies it has against Impact in respect of any breach of this Deed by Impact which occurred before termination of this Deed.

## **3. Payment of Share Scheme Consideration**

### **3.1 Undertaking to pay Share Scheme Consideration**

Subject to clauses 2 and 3.3, in consideration of the transfer of each Invictus Share to Impact, Impact must:

- (a) acquire all Invictus Shares on issue at the Record Date from Scheme Shareholders, in accordance with the provisions of the Share Scheme;
- (b) issue and allot the Share Scheme Consideration to each Scheme Shareholder (other than to Ineligible Foreign Holders who will be dealt with in accordance with clause 3.3); and
- (c) otherwise do all things necessary or expedient on its part to implement the Share Scheme.

### **3.2 Satisfaction of obligation to provide Share Scheme Consideration**

The obligation of Impact to provide the Share Scheme Consideration referred to in clause 3.1(b) will be satisfied by Impact:

- (a) on the Implementation Date, passing a resolution of directors and doing all other things necessary to validly issue the New Impact Shares comprising the Share Scheme Consideration due to that Scheme Shareholder (other than an Ineligible Foreign Holder) and entering in the register of members of Impact the name and registered address of each Scheme Shareholder, in relation to all the New Impact Shares issued to each Scheme Shareholder as Share Scheme Consideration in accordance with the Share Scheme;
- (b) on the Implementation Date, passing a resolution of directors and doing all other things necessary to validly issue to the Sale Agent all the New Impact Shares required to be issued to the Sale Agent under the Share Scheme rather than to an Ineligible Foreign Holder, and entering the name and registered address of the Sale Agent in the register of members of Impact as the holder of those New Impact Shares;
- (c) within 5 Business Days after the Implementation Date, dispatching to each Scheme Shareholder, by pre-paid post to his or her address as recorded in Invictus' share register at the Record Date or to the Sale Agent (as the case may be), a certificate or uncertificated holding statement in the name of that Scheme Shareholder representing the number of New Impact Shares issued to that Scheme Shareholder;
- (d) on the Implementation Date, if required by Invictus, executing a valid share transfer form or forms (which may be a master transfer) as contemplated by clause 4.3 of the Share Scheme effecting the transfer of the Scheme Shares from the Scheme Shareholders to Impact and must deliver such executed share transfer form or forms to Invictus for registration; and
- (e) procuring, as soon as reasonably practicable (and in any event not more than 15 Business Days after the Implementation Date) that the Sale Agent sell any New Impact Shares issued to it and remit the proceeds to the relevant Ineligible Foreign Holders, in accordance with the Share Scheme.

### **3.3 Ineligible Foreign Holders**

Impact will be under no obligation under the Share Scheme to issue, and will not issue, any New Impact Shares to an Ineligible Foreign Holder, and instead where a Scheme Shareholder is an Ineligible Foreign Holder, the number of New Impact

Shares to which the Scheme Shareholder would otherwise be entitled, will be allotted to a nominee approved by Invictus and ASIC who will sell those New Impact Shares as soon as practicable (at the risk of that Ineligible Foreign Holder) and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to that Ineligible Foreign Holder in full satisfaction of that Ineligible Foreign Holder's rights under the Share Scheme to Share Scheme Consideration.

### 3.4 Joint holders

In the case of Invictus Shares held by Scheme Shareholders in joint names:

- (a) any entry in the register of members of Impact required to be made must record the names and registered addresses of the joint holders; and
- (b) any certificates or uncertificated holding statement for New Impact Shares must be issued to Scheme Shareholders in the names of the joint holders and must be forwarded to the holder whose name first appears in Invictus's share register at the Record Date.

## 4. Representations and warranties

Impact represents and warrants that:

- (a) **(status)** it is a company limited by shares and validly existing;
- (b) **(power)** it has full legal capacity and power to enter into this Deed and to carry out the transactions that this Deed contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed and its carrying out the transactions this Deed contemplates;
- (d) **(Deed effective)** this Deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditor's rights generally) subject to any necessary stamping; and
- (e) **(Rank equally)** the New Impact Shares to be issued pursuant to the Share Scheme will be validly issued, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest and will rank equally in all respects with all other Impact Shares then on issue (other than in respect of any dividend already declared and not yet paid by Impact, where the record date for entitlement to that dividend occurred prior to the Implementation Date).

## 5. Continuing obligations

This Deed is irrevocable and, subject to clause 2, remains in full force and effect until Impact has completely performed its obligations under this Deed or the earlier termination of this Deed under clause 2.

## 6. Notices

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

- (a) must be in writing;
- (b) must be addressed to the address notified by the recipient to the sender from time to time. As at the date of this Deed, Impact's address is the address as set out at the start of this Deed;
- (c) must be signed by the sender or (on that sender's behalf) by the solicitor for or any attorney, director, secretary or authorised agent of that sender;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee in accordance with (c); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting;
  - (iii) (in the case of facsimile) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the facsimile machine from which it was sent or other verification from the time of sending; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication would, on the application of clauses (i) to (iv), be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

## 7. Amendment and assignment

### 7.1 Amendment

This Deed may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by Invictus; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by Invictus and is approved by the Court,

and, in which case, Impact will enter into a further deed poll in favour of Scheme Shareholders giving effect to that amendment.

## 7.2 Assignment

The rights and obligations of a person under this Deed are personal. They cannot be assigned, novated, encumbered, charged or otherwise dealt with, and no person shall attempt or purport to do so.

## 8. General

### 8.1 Governing law

This Deed is governed by and must be construed according to the laws applying in Western Australia.

### 8.2 Jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waive any right they might have to claim that those courts are an inconvenient forum.

### 8.3 Liability for expenses

Impact is solely responsible for, and must indemnify each Scheme Shareholder against, and must pay each Scheme Shareholder on demand the amount of, any duty that is payable and any related fines, interest and penalties in respect of or in connection with this Deed, the performance of this Deed and each transaction effected by or made or any instrument executed under this Deed or the Share Scheme, including the transfer of Scheme Shares under the Share Scheme.

### 8.4 Waiver of rights

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### 8.5 Consent

Impact consents to Invictus producing this Deed to the Court.

### 8.6 Further acts and documents

Impact must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to Invictus) required by law or reasonably requested by Invictus to give full effect to this Deed and the transactions contemplated by this Deed.

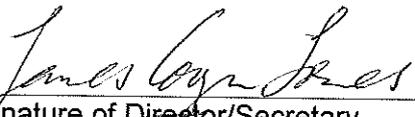
**8.7 Severance and enforceability**

Any provision, or the application of any provision, of this Deed that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed in that or any other jurisdiction.

Executed as a deed poll by )  
**Impact Minerals Limited** ACN 119 062 )  
261 pursuant to section 127 of the )  
Corporations Act: )

  
\_\_\_\_\_  
Signature of Director

MICHAEL GRIFFITH JONES  
Print name of Director

  
\_\_\_\_\_  
Signature of Director/Secretary

JAMES COOPER-JONES  
Print name of Director/Secretary

## Annexure 2 - Option Scheme of Arrangement

# Option Scheme of Arrangement

pursuant to Section 411 of the Corporations Act

Invictus Gold Limited  
ACN 145 891 907

and

Each Scheme Optionholder

---

## Table of contents

1.	Definitions and interpretation .....	1
1.1	Definitions .....	1
1.2	Interpretation .....	3
2.	Preliminary .....	5
2.1	Invictus .....	5
2.2	Impact.....	5
2.3	Option Scheme summary .....	5
2.4	Implementation .....	5
3.	Conditions precedent and effectiveness .....	6
3.1	Conditions precedent.....	6
3.2	Certificate .....	7
3.3	Merger Implementation Agreement.....	7
3.4	Sunset Date.....	7
4.	Implementation of the Option Scheme.....	7
4.1	Court order .....	7
4.2	Lodgement with ASIC .....	7
4.3	Cancellation of Scheme Options.....	7
4.4	Consideration under this Option Scheme.....	8
4.5	Joint holders .....	8
4.6	Scheme Optionholders bound.....	8
4.7	Authority given to Invictus .....	8
4.8	Appointment of sole proxy .....	9
5.	Impact's obligations and ancillary matters .....	9
5.1	Invictus notice and Scheme Optionholder consent.....	9
5.2	Provision of Option Scheme Consideration.....	9
5.3	Status of New Impact Options.....	10
5.4	Deferred settlement trading .....	10
5.5	Appointment of Impact as attorney and agent.....	10
6.	Dealings in Invictus Options .....	10
6.1	No allotment or issue .....	10
6.2	No dealings after Record Date.....	10
6.3	No registration of transfers.....	10
6.4	Statements of holding .....	11
6.5	Maintenance of Option Register.....	11
7.	Quotation of Invictus Options .....	11
7.1	Suspension of trading .....	11

---

7.2 Termination of quotation ..... 11

8. General ..... 11

8.1 Option Scheme binding..... 11

8.2 Enforcement of Option Scheme Deed Poll..... 11

8.3 Modifications and amendments ..... 12

8.4 Accidental omissions and non-receipt of notice..... 12

8.5 Binding instruction or notification ..... 12

8.6 Notices ..... 12

8.7 Further obligations ..... 12

8.8 No liability ..... 12

8.9 Costs and stamp duty ..... 13

8.10 Governing law..... 13

Schedule 1 – Terms and Conditions of New Impact Options..... 14

## Option Scheme of Arrangement

Date

22 August

2013

### Parties

**Invictus Gold Limited** ACN 145 891 907 of 309 Newcastle Street, Northbridge Western Australia 6003 (**Invictus**)

### Each Scheme Optionholder

#### 1. Definitions and interpretation

##### 1.1 Definitions

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

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

**ASX Operating Rules** means the operating rules of ASX Settlement.

**ASX Settlement** means ASX Settlement Pty Ltd ACN 008 504 532.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth, Western Australia.

**CHESS** means the Clearing House Electronic Sub-register System, for the electronic transfer of securities, operated by ASX Settlement.

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

**Court** means the Federal Court of Australia or the Supreme Court of Western Australia or such other court of competent jurisdiction as agreed by Impact and Invictus in writing.

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

**Effective** means, when used in relation to the Option Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Option Scheme.

**Impact** means Impact Minerals Limited ACN 119 062 261.

**Impact Option** means an option to subscribe for an Impact Share.

**Impact Register** means the register of members of Impact maintained by Computershare Limited and Impact Registry has a corresponding meaning.

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

**Implementation Date** means the fifth Business Day after the Record Date.

**Invictus** means Invictus Gold Limited ACN 145 891 907.

**Invictus Option** means an option to subscribe for an Invictus Share.

**Invictus Share** means a fully paid ordinary share in Invictus.

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

**Merger Implementation Agreement** means the merger implementation agreement dated <date> 2013 between Invictus and Impact.

**New Impact Options** means those Impact Options to be issued (as Option Scheme Consideration) to (or in respect of) Scheme Optionholders as consideration for their Scheme Options.

**Option Register** means the register of Invictus members maintained by Computershare Investor Services Pty Limited and Option Registry has a corresponding meaning.

**Option Scheme Consideration** means the consideration to be provided by Impact to Scheme Optionholders for the transfer of their Scheme Options under the terms of the Option Scheme, being 1 New Impact Option for every 1 Scheme Option on the terms and conditions set out in Schedule 1.

**Option Scheme Deed Poll** means the deed poll executed by Impact on or about <date> 2013 in favour of each Scheme Optionholder as set out in Annexure A.

**Option Scheme Meeting** means the meeting of Scheme Optionholders, to be convened by the Court pursuant to section 411(1) of the Corporations Act, to consider and vote on the Option Scheme.

**Option Scheme** or **Option Scheme of Arrangement** means the scheme of arrangement under Part 5.1 of the Corporations Act recorded in this document subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act.

**Optionholder** means a holder of an Invictus Option.

**Record Date** means 5.00pm on the fifth Business Day after the Effective Date, or any other date agreed by Invictus and Impact.

**Registered Address** means, in relation to a Scheme Optionholder, the address of the Scheme Optionholder shown in the Option Register.

**Scheme Optionholder** means each person who is registered in the Option Register as a holder of Scheme Options as at the Record Date.

**Scheme Options** means the 8,000,000 Invictus Options on issue and quoted on ASX, with an exercise price of \$0.25 each and expiring on 30 November 2015.

**Scheme Shareholder** means each person, other than Impact, recorded in the register of members of Invictus as at the Share Scheme Record Date.

**Second Court Date** means the first day of the Second Court Hearing, or if the application at such hearing is adjourned or subject to an appeal for any reason, the first day on which the adjourned or appealed application is heard.

**Second Court Hearing** means the hearing of the Court of the application for an order pursuant to section 411(4)(b) of the Corporations Act approving this Option Scheme.

**Share Scheme Meeting** means the meeting of Shareholders, to be convened by the Court pursuant to section 411(1) of the Corporations Act, to consider and vote on the Share Scheme.

**Share Scheme or Share Scheme of Arrangement** means the scheme of arrangement under Part 5.1 of the Corporations Act between Invictus and the Scheme Shareholders subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Impact and Invictus.

**Share Scheme Record Date** means the "Record Date" as defined in the Share Scheme.

**Shareholder** means a holder of an Invictus Share.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of Division 6 of Part 1.2 of the Corporations Act or is a subsidiary or otherwise controlled by the first within the meaning of any approved accounting standard.

**Sunset Date** means 31 December 2013.

## 1.2 Interpretation

In this Option Scheme:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates otherwise:
- (b) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to:
  - (i) a clause or schedule is a reference to a clause or schedule of this Scheme;

- (ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - (iii) a document in writing includes a document produced by means of typewriting, printing, lithography, photography and other modes of representing or reproducing words in a visible form, recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
  - (iv) a document (including this Scheme) includes a reference to all schedules, exhibits, attachments and annexures to it, and is to that document as varied, novated, ratified or replaced from time to time;
  - (v) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
  - (vi) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a day is to a period of time commencing at midnight and ending twenty four (24) hours later;
  - (f) a reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act;
  - (g) the word "**includes**" in any form is not a word of limitation;
  - (h) a reference to "**information**" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programmes, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
  - (i) the words "**entity**" and "**officer**" have the same meaning as in section 9 of the Corporations Act, and "**control**" has the same meaning as in section 50AA of the Corporations Act;
  - (j) time is a reference to time in Perth, Western Australia;
  - (k) a reference to "**\$**" or "**dollar**" is to Australian currency;
  - (l) a contravention of or a breach of any of the representations and warranties includes any of the representations and warranties not being complete, true and correct;
  - (m) each representation and warranty is a separate representation and warranty, and its meaning is not affected by any other representation or warranty;

- (n) a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (o) when a day on or by which anything to be done is not a Business Day, that thing may be done on or by the next Business Day.

## **2. Preliminary**

### **2.1 Invictus**

- (a) Invictus is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of this document:
  - (i) 111,335,875 Invictus Shares were on issue;
  - (ii) 8,000,000 listed Invictus Options were on issue; and
  - (iii) 27,700,000 unlisted Invictus Options were on issue.
- (c) Invictus has been admitted to the official list of ASX and its shares have been granted official quotation.

### **2.2 Impact**

- (a) Impact is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of this document:
  - (i) 371,912,552 Impact Shares were on issue; and
  - (ii) 28,250,000 Impact Options were on issue.
- (c) Impact has been admitted to the official list of ASX and its shares have been granted official quotation.

### **2.3 Option Scheme summary**

If this Option Scheme becomes Effective, then:

- (a) in consideration for the cancellation of each Scheme Option to Impact, Impact will be obliged to provide the Option Scheme Consideration to each Scheme Optionholder; and
- (b) all of the Scheme Options and all rights and obligations attaching to them as at the Implementation Date, will be cancelled.

### **2.4 Implementation**

- (a) Impact has entered into the Option Scheme Deed Poll pursuant to which it has, among other things, covenanted to carry out its obligations (including its

obligation to provide the Option Scheme Consideration, to Scheme Optionholders) as contemplated by this Option Scheme.

- (b) Invictus and Impact have also entered into the Merger Implementation Agreement, which sets out the terms on which Invictus and Impact have agreed to implement the Option Scheme.

### 3. Conditions precedent and effectiveness

#### 3.1 Conditions precedent

The conditions precedent to this Option Scheme becoming Effective are:

- (a) **(Option Scheme approval)** this Option Scheme being approved, in accordance with section 411(4)(a) of the Corporations Act, at the Option Scheme Meeting;
- (b) **(Share Scheme approval)** the Share Scheme being approved, in accordance with section 411(4)(a) of the Corporations Act, at the Share Scheme Meeting;
- (c) **(conditions precedent to Merger Implementation Agreement)** all of the conditions set out in clause 2.4 of the Merger Implementation Agreement being satisfied or waived in accordance with the terms of the Merger Implementation Agreement by the times indicated in the Merger Implementation Agreement;
- (d) **(no termination)** the Merger Implementation Agreement or Option Scheme Deed Poll not being terminated prior to 8.00am on the Second Court Date;
- (e) **(Court approval)** the approval by the Court of this Option Scheme, pursuant to section 411(4)(b) of the Corporations Act, being given;
- (f) **(Court conditions)** such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Option Scheme as are acceptable to Impact and Invictus being satisfied;
- (g) **(Court approval of Share Scheme)** the approval by the Court of the Share Scheme, pursuant to section 411(4)(b) of the Corporations Act, being given; and
- (h) **(Court conditions for Share Scheme)** such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Share Scheme as are acceptable to Impact and Invictus being satisfied.

The satisfaction of each of paragraphs (a) to (h) of this clause 3.1 is a condition precedent to the operation of this Option Scheme and this Option Scheme will be of no effect unless the conditions precedent in this clause 3.1 are satisfied.

### **3.2 Certificate**

Impact and Invictus will provide to the Court at the Second Court Hearing a certificate confirming whether or not all of the conditions in clause 2.4 of the Merger Implementation Agreement (other than those set out in clauses 2.4(e) and (f) of the Merger Implementation Agreement) have been satisfied or waived in accordance with the terms of the Merger Implementation Agreement.

### **3.3 Merger Implementation Agreement**

If the Merger Implementation Agreement is terminated in accordance with its terms prior to 8.00am on the Second Court Date, Impact and Invictus are each immediately released from any further obligation to take steps to implement the Option Scheme.

### **3.4 Sunset Date**

This Option Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the Sunset Date.

## **4. Implementation of the Option Scheme**

### **4.1 Court order**

This Option Scheme will become binding on Invictus and each Scheme Optionholder if and only if the Court makes an order under section 411(4)(b) of the Corporations Act approving this Option Scheme and that order becomes effective under section 411(10) of the Corporations Act.

### **4.2 Lodgement with ASIC**

Invictus will lodge with ASIC an office copy of the order of the Court made under section 411(4)(b) of the Corporations Act approving this Option Scheme as soon as practicable and, in any event, by 5.00pm on the first Business Day after:

- (a) the Court approves the Option Scheme; or
- (b) the date of satisfaction of the conditions precedent referred to in clause 3.1 of this Option Scheme,

whichever is the later.

### **4.3 Cancellation of Scheme Options**

- (a) Subject to the provision of the Option Scheme Consideration in the manner contemplated by clause 4.4, on the Implementation Date all of the Scheme Options (together with all rights and entitlements attaching to the Scheme Options) will be cancelled (without the need for any further act by a Scheme Optionholder other than acts performed by Invictus pursuant to the authority in clause 4.7) and each Scheme Optionholder:
  - (i) releases Invictus from all obligations in relation to those Scheme Options;

- (ii) releases and waives any and all rights it may have had (including to be issued Invictus Shares) in relation to those Scheme Options (including under a relevant option plan or under the terms of the relevant Scheme Options); and
  - (iii) authorises Invictus to update the Option Register recording the cancellation of the Invictus Options that constitute the Scheme Options.
- (b) In consideration for the cancellation of their Scheme Options, each Scheme Optionholder will be entitled to receive the Option Scheme Consideration in accordance with clause 4.4.

#### **4.4 Consideration under this Option Scheme**

Subject to and in accordance with the other terms and conditions of this Option Scheme, in consideration for the cancellation of each Scheme Option, Impact will on the Implementation Date grant to each Scheme Optionholder the number of New Impact Options as are due to that Scheme Optionholder as Option Scheme Consideration.

#### **4.5 Joint holders**

In the case of Scheme Options held in joint names, any certificates or uncertificated holding statements for New Impact Options to be issued to Option Scheme Optionholders will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the Option Register on the Record Date.

#### **4.6 Scheme Optionholders bound**

Each Scheme Optionholder who is to receive New Impact Options under this Option Scheme agrees to have their name and address entered into the Option Register and accept the New Impact Options issued to them under this Option Scheme.

#### **4.7 Authority given to Invictus**

Each Scheme Optionholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints Invictus and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Option Scheme Deed Poll against Impact, and Invictus undertakes in favour of each Scheme Optionholder that it will enforce the Option Scheme Deed Poll against Impact on behalf of and as agent and attorney for Scheme Optionholders; and
- (b) on the Implementation Date, irrevocably appoints Invictus and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Option Scheme and the transactions contemplated by it, including (without limitation) the cancellation of the Scheme Options,

and Invictus accepts each such appointment. Invictus as attorney and agent of each Scheme Optionholder, may sub-delegate its functions, authorities or powers under this clause 4.7 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

#### **4.8 Appointment of sole proxy**

Upon the Option Scheme Consideration being issued by Impact pursuant to this clause 4 and until Invictus registers Impact as the holder of all Scheme Options in the Option Register, each Scheme Optionholder:

- (a) is deemed to have appointed Impact as attorney and agent (and directed Impact in such capacity) to appoint the chairman of Impact as its sole proxy and, where applicable, corporate representative, to attend meetings of holders of Invictus Options, exercise the votes attaching to the Scheme Options registered in their name and sign any resolution of holders of Invictus Options, and no Scheme Optionholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 4.8(a)); and
- (b) must take all other actions in the capacity of a registered holder of Scheme Options as Impact reasonably directs.

### **5. Impact's obligations and ancillary matters**

#### **5.1 Invictus notice and Scheme Optionholder consent**

- (a) As soon as practicable after the Record Date, and in any event at least 2 Business Days before the Implementation Date, Invictus will give to Impact (or procure that Impact be given) details of the names and addresses shown in the Option Register of all Scheme Optionholders and the number of Scheme Options held by each of them at the Record Date (in such form as may be reasonably requested by Impact).
- (b) Scheme Optionholders agree that any information referred to in clause 5.1(a) may be disclosed to Impact, Impact's advisors, Invictus' advisors and other service providers (including the Impact Registry) to the extent necessary to effect the Option Scheme.

#### **5.2 Provision of Option Scheme Consideration**

Impact will provide to each Scheme Optionholder the Option Scheme Consideration to which that Scheme Optionholder is entitled by:

- (a) on the Implementation Date, issuing to that Scheme Optionholder 1 New Impact Option for every 1 Scheme Option registered in the name of that Scheme Optionholder in the Option Register at the Record Date, which obligation will be satisfied by causing the name and Registered Address (at the Record Date) of that Scheme Optionholder to be entered into the Impact Register as the holder of the New Impact Options issued to that Scheme Optionholder; and

- (b) within 5 Business Days after the Implementation Date, procuring the dispatch to that Scheme Optionholder, if their New Impact Options are to be held on the issuer sponsored subregister of Impact, by pre-paid post to their Registered Address (at the Record Date), of an uncertificated holding statement in the name of that Scheme Optionholder relating to the number of New Impact Options issued to that Scheme Optionholder.

### **5.3 Status of New Impact Options**

The New Impact Options to be issued in accordance with this Option Scheme will be validly issued.

### **5.4 Deferred settlement trading**

Impact will use its best endeavours to ensure that the New Impact Options to be issued to Scheme Optionholders are quoted on ASX as soon as practicable after the Effective Date, initially on a deferred settlement basis and thereafter on an ordinary settlement basis.

### **5.5 Appointment of Impact as attorney and agent**

Each Scheme Optionholder, without need for any further act, irrevocably appoints Impact and each of its directors and officers, jointly and severally, as that Scheme Optionholder's attorney and agent for the purpose of executing any form of application required for New Impact Options to be issued to that Scheme Optionholder under the Option Scheme.

## **6. Dealings in Invictus Options**

### **6.1 No allotment or issue**

No Invictus Options will be allotted or issued by Invictus after the Effective Date.

### **6.2 No dealings after Record Date**

Where this Option Scheme becomes binding as provided by clause 4.1, for the purposes of determining who are Scheme Optionholders, dealings in Scheme Options will only be recognised if:

- (a) in the case of dealings of a type to be effected using CHESSE, the transferee is registered in the Option Register as the holder of the Scheme Options by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Option Registry by the Record Date.

Invictus will register registrable transfers or transmission applications of the kind referred to in clause 6.2(b) on or before the Record Date.

### **6.3 No registration of transfers**

Invictus will not accept for registration nor recognise for any purpose any transmission application, transfer or other dealing in respect of Scheme Options

received after the Record Date, other than a transfer to Impact in accordance with this Option Scheme.

#### **6.4 Statements of holding**

All statements of holdings (or certificates) for Scheme Options will cease to have any effect from the Record Date as documents of title in respect of such Scheme Options. As from the Record Date, each entry current at that date on the Share Register relating to Scheme Options will cease to be of any effect other than as evidence of entitlement to the Option Scheme Consideration.

#### **6.5 Maintenance of Option Register**

In order to determine entitlements to the Option Scheme Consideration, Invictus will maintain, or procure the maintenance of, the Option Register in accordance with this clause 6 until the Option Scheme Consideration has been provided to Scheme Optionholders, and the Option Register in this form will solely determine entitlements to the Option Scheme Consideration.

### **7. Quotation of Invictus Options**

#### **7.1 Suspension of trading**

Invictus will apply to ASX for suspension of trading of Invictus Options on ASX after the close of trading on ASX on the Effective Date. It is expected that suspension of trading in Invictus Options will occur from the commencement of the Business Day following the day on which Invictus notifies ASX of this Option Scheme becoming Effective.

#### **7.2 Termination of quotation**

After the Implementation Date, Invictus will apply for termination of the official quotation of Scheme Options.

### **8. General**

#### **8.1 Option Scheme binding**

This Option Scheme binds Invictus and all Scheme Optionholders (including those who do not attend the Option Scheme Meeting, do not vote at the Option Scheme Meeting, or vote against this Option Scheme at the Option Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Invictus.

#### **8.2 Enforcement of Option Scheme Deed Poll**

- (a) Each Scheme Optionholder appoints Invictus as its agent and attorney to enforce the Option Scheme Deed Poll against Impact.
- (b) Invictus undertakes in favour of each Scheme Optionholder to enforce the Option Scheme Deed Poll against Impact on behalf of, and as agent and attorney for, the Scheme Optionholders.

### **8.3 Modifications and amendments**

Invictus may by its counsel or solicitors (but only with the prior consent of Impact, which consent may not be unreasonably withheld or delayed) consent on behalf of all persons concerned (including the Scheme Optionholders) to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of this Option Scheme.

### **8.4 Accidental omissions and non-receipt of notice**

The accidental omission to give notice of the Option Scheme Meeting to any holder of Scheme Options or the non-receipt of such a notice by any holder of Scheme Options will not, unless so ordered by the Court, invalidate the Option Scheme Meeting or the proceedings at the Option Scheme Meeting.

### **8.5 Binding instruction or notification**

Except for a Scheme Optionholder's tax file number, any binding instruction or notification from a Scheme Optionholder to Invictus relating to Scheme Options at the Record Date (including any instructions relating to communications) will, from the Record Date, be deemed (except to the extent inconsistent with the other provisions of this Option Scheme or as determined otherwise by Impact in its sole discretion) to be a similarly binding instruction or notification to Impact in respect of the New Impact Options issued to the Scheme Optionholder until such time as it is revoked or amended in writing addressed to Impact at the Impact Registry.

### **8.6 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in this Option Scheme is sent by post:

- (a) to Invictus, it will not be deemed to be received in the ordinary course of post or on a day other than the date (if any) on which it was actually received at Invictus' registered office or the Option Registry; and
- (b) to a Scheme Optionholder, it will be sent by ordinary pre-paid post (or by airmail in the case of Scheme Optionholders with overseas Registered Addresses) or courier to the Registered Address of the relevant Scheme Optionholder at the Record Date, or delivered to that address by any other means at no cost to the recipient.

### **8.7 Further obligations**

Invictus and Impact must each execute all deeds and other documents (including transfers) and do all acts and things as may be necessary or expedient on its part to implement and give full effect to this Option Scheme in accordance with its terms.

### **8.8 No liability**

Neither Invictus nor Impact, nor any of their respective officers, is liable to Scheme Optionholders for anything done or for anything omitted to be done in performance of this Option Scheme in good faith.

**8.9 Costs and stamp duty**

Invictus will pay the costs of the Option Scheme other than duty.

**8.10 Governing law**

This Option Scheme is governed by and must be construed according to the laws applying in Western Australia.

**8.11 Jurisdiction**

Invictus, Scheme Optionholders and Impact each submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waive any right they might have to claim that those courts are an inconvenient forum.

---

## Schedule 1 – Terms and Conditions of New Impact Options

The New Impact Options will be issued on the following terms:

- (a) Each New Impact Option has an exercise price of \$0.20 and an expiry date of 30 November 2015.
- (b) Each New Impact Option entitles the holder to subscribe for one (1) fully paid ordinary Share in Impact.
- (c) Any New Impact Option not exercised by their expiry date will automatically expire.
- (d) Impact must give the optionholder a certificate or Holding Statement stating the:
  - (i) number of New Impact Options issued to the optionholder;
  - (ii) exercise price of the New Impact Options; and
  - (iii) date of issue of the New Impact Options.
- (e) The New Impact Options are transferable. Subject to the ASX Listing Rules and the Corporations Act, the optionholder may transfer some or all of the New Impact Options at any time before they expire by a:
  - (i) proper ASTC transfer or any other method permitted by the Corporations Act; or
  - (ii) prescribed instrument of transfer.
- (f) An instrument of transfer of a New Impact Option must be:
  - (i) in writing;
  - (ii) in any usual form or in any other form approved by the Directors that is otherwise permitted by law;
  - (iii) subject to the Corporations Act, executed by or on behalf of the transferor, and if required by the Company, the transferee; and
  - (iv) delivered to Impact, at the place where Impact's register of optionholders is kept, together with the certificate (if any) of the New Impact Option to be transferred and any other evidence as the Impact Directors require to prove the title of the transferor to that New Impact Option, the right of the transferor to transfer that New Impact Option and the proper execution of the instrument of transfer.
- (g) Impact will apply to ASX for quotation of the New Impact Options.
- (h) Impact will apply to ASX for Official Quotation of the Shares issued on exercise of New Impact Options.
- (i) The optionholder is not entitled to participate in any new issue to existing Impact Shareholders of securities in Impact unless they have exercised their New Impact

Options before the "record date" for determining entitlements to the new issue of securities and participate as a result of holding Impact Shares. Impact must give the optionholder notice of the proposed terms of the issue or offer in accordance with ASX Listing Rules.

- (j) If Impact makes a bonus issue of Impact Shares or other securities to Impact Shareholders (except an issue in lieu of dividends or by way of dividend reinvestment) and no Impact Share has been issued in respect of the New Impact Option before the "record date" for determining entitlements to the issue, then the number of underlying Impact Shares over which the New Impact Option is exercisable is increased by the number of Impact Shares which the optionholder would have received if the optionholder had exercised the New Impact Option before the "record date" for determining entitlements to the issue.
- (k) If there is a reorganisation (including consolidation, sub-division, reduction or return) of the share capital of Impact, then the rights of the optionholder (including the number of New Impact Options to which the optionholder is entitled to and the exercise price) is changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of capital at the time of the reorganisation.
- (l) Any calculations or adjustments which are required to be made will be made by Impact's board of Directors and will, in the absence of manifest error, be final and conclusive and binding on Impact and the optionholder.
- (m) Impact must, within a reasonable period, give to the optionholder notice of any change to the exercise price of any New Impact Options held by the optionholder or the number of Impact Shares which the optionholder is entitled to subscribe for on exercise of a New Impact Option.
- (n) To exercise New Impact Options, the optionholder must give Impact or its share registry, at the same time:
  - (i) a written exercise notice (in the form approved by the board of Impact from time to time) specifying the number of New Impact Options being exercised and Impact Shares to be issued;
  - (ii) payment of the exercise price for the Impact Shares, the subject of the exercise notice, by way of bank cheque or by other means of payment approved by Impact; and
  - (iii) any certificate for the New Impact Options.
- (o) The optionholder may only exercise New Impact Options in multiples of 5,000 New Impact Options unless the optionholder exercises all New Impact Options held by the optionholder.
- (p) New Impact Options will be deemed to have been exercised on the date the exercise notice is lodged with the Directors of Impact.
- (q) If the optionholder exercises less than the total number of New Impact Options registered in the optionholder's name:
  - (i) the optionholder must surrender their option certificate (if any); and

- (ii) Impact must cancel the option certificate (if any) and issue the optionholder a new option certificate or Holding Statement stating the remaining number of New Impact Options held by the optionholder.
- (r) Within 10 days after receiving an application for exercise of New Impact Options and payment by the optionholder of the exercise price, Impact must issue the optionholder the number of Impact Shares specified in the application.
- (s) Subject to Impact's Constitution, all Impact Shares issued on the exercise of New Impact Options will rank in all respects (including rights relating to dividends) equally with the existing ordinary shares of Impact at the date of issue.
- (t) These terms and the rights and obligations of the optionholder are governed by the laws of Western Australia. The optionholder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

## Annexure A – Option Scheme Deed Poll

## Option Scheme Deed Poll

Impact Minerals Limited  
ACN 119 062 261

Date

22 August

2013

## Parties

**Impact Minerals Limited ACN 119 062 261** of 309 Newcastle Street, Northbridge, Western Australia, 6003 (**Impact**)

In favour of each holder of Scheme Options in the capital of **Invictus Gold Limited ACN 145 891 907 (Invictus)** identified in the Option Scheme on issue as at 5.00pm on the Record Date (each a **Scheme Optionholder**)

## Recitals

- A. Impact and Invictus have entered into the Merger Implementation Agreement.
- B. Invictus has agreed in the Merger Implementation Agreement to propose the Option Scheme.
- C. Under the Option Scheme, all Scheme Options held by Scheme Optionholders will be cancelled and Scheme Optionholder will receive the Option Scheme Consideration.
- D. In accordance with the Merger Implementation Agreement, Impact is entering into this Deed to covenant in favour of the Scheme Optionholders to perform its obligations under the Option Scheme.

## 1. Definitions and interpretation

### 1.1 Definitions

In this Deed, unless the context requires otherwise:

**Deed** means this Option Scheme Deed Poll.

**Merger Implementation Agreement** means the merger implementation agreement between Invictus and Impact dated <date> 2013.

**Option Scheme** means the scheme of arrangement under section 411 of the Corporations Act between Invictus and the Scheme Optionholders, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and approved in writing by Invictus and Impact.

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

## **1.2 Interpretation**

The rules specified in clause 1.2 of the Merger Implementation Agreement apply in interpreting this Deed, unless the context makes it clear that a rule is not intended to apply.

## **1.3 Nature of Option Scheme Deed Poll**

Impact acknowledges that:

- (a) this Deed may be relied on and enforced by any Scheme Optionholder in accordance with its terms even though the Scheme Optionholders are not party to it; and
- (b) under the Option Scheme, each Scheme Optionholder irrevocably appoints Invictus and any of Invictus' directors as its agent and attorney, inter alia, to enforce this Deed against Impact.

## **2. Condition precedent and termination**

### **2.1 Condition**

Impact's obligations under clause 3 are subject to the Option Scheme becoming Effective.

### **2.2 Termination**

If the Option Scheme does not become Effective on or before the Sunset Date, or the Merger Implementation Agreement is terminated, Impact's obligations under this Deed will automatically terminate and the terms of this Deed will be of no further force or effect, unless Impact and Invictus otherwise agree in writing.

### **2.3 Consequences of termination**

If this Deed is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Impact is released from its obligations to further perform this Deed except those obligations contained in clause 8.3; and
- (b) each Scheme Optionholder retains any rights, power or remedies it has against Impact in respect of any breach of this Deed by Impact which occurred before termination of this Deed.

## **3. Payment of Option Scheme Consideration**

### **3.1 Undertaking to pay Option Scheme Consideration**

Subject to clause 2, in consideration of the cancellation of each Scheme Option, Impact must:

- (a) grant the Option Scheme Consideration to each Scheme Optionholder; and

- (b) otherwise do all things necessary or expedient on its part to implement the Option Scheme.

### 3.2 Satisfaction of obligation to provide Option Scheme Consideration

The obligation of Impact to provide the Option Scheme Consideration referred to in clause 3.1(a) will be satisfied by Impact:

- (a) on the Implementation Date, passing a resolution of directors and doing all other things necessary to validly issue the New Impact Options comprising the Option Scheme Consideration due to that Scheme Optionholder and entering in the register of Optionholders of Impact the name and registered address of each Scheme Optionholder, in relation to all the New Impact Options issued to each Scheme Optionholder as Option Scheme Consideration in accordance with the Option Scheme;
- (b) within 5 Business Days after the Implementation Date, dispatching to each Scheme Optionholder, by pre-paid post to his or her address as recorded in Invictus' option register at the Record Date, a certificate or uncertificated holding statement in the name of that Scheme Optionholder representing the number of New Impact Options issued to that Scheme Optionholder.

### 3.3 Joint holders

In the case of Invictus Options held by Scheme Optionholders in joint names:

- (a) any entry in the Impact Register required to be made must record the names and registered addresses of the joint holders; and
- (b) any certificates or uncertificated holding statement for New Impact Options must be issued to Scheme Optionholders in the names of the joint holders and must be forwarded to the holder whose name first appears in Invictus' option register at the Record Date.

## 4. Representations and warranties

Impact represents and warrants that:

- (a) **(status)** it is a company limited by shares and validly existing;
- (b) **(power)** it has full legal capacity and power to enter into this Deed and to carry out the transactions that this Deed contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed and its carrying out the transactions this Deed contemplates; and
- (d) **(Deed effective)** this Deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditor's rights generally) subject to any necessary stamping.

## 5. Continuing obligations

This Deed is irrevocable and, subject to clause 2, remains in full force and effect until Impact has completely performed its obligations under this Deed or the earlier termination of this Deed under clause 2.

## 6. Notices

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

- (a) must be in writing;
- (b) must be addressed to the address notified by the recipient to the sender from time to time. As at the date of this Deed, Impact's address is the address as set out at the start of this Deed;
- (c) must be signed by the sender or (on that sender's behalf) by the solicitor for or any attorney, director, secretary or authorised agent of that sender;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee in accordance with (c); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting;
  - (iii) (in the case of facsimile) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the facsimile machine from which it was sent or other verification from the time of sending; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication would, on the application of clauses (i) to (iv), be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

## 7. Amendment and assignment

### 7.1 Amendment

This Deed may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by Invictus;  
or

- (b) on or after the Second Court Date, the variation is agreed to in writing by Invictus and is approved by the Court,

and, in which case, Impact will enter into a further deed poll in favour of Scheme Optionholders giving effect to that amendment.

## **7.2 Assignment**

The rights and obligations of a person under this Deed are personal. They cannot be assigned, novated, encumbered, charged or otherwise dealt with, and no person shall attempt or purport to do so.

## **8. General**

### **8.1 Governing law**

This Deed is governed by and must be construed according to the laws applying in Western Australia.

### **8.2 Jurisdiction**

Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waive any right they might have to claim that those courts are an inconvenient forum.

### **8.3 Liability for expenses**

Impact is solely responsible for, and must indemnify each Scheme Optionholder against, and must pay each Scheme Optionholder on demand the amount of, any duty that is payable and any related fines, interest and penalties in respect of or in connection with this Deed, the performance of this Deed and each transaction effected by or made or any instrument executed under this Deed or the Option Scheme, including the transfer of Scheme Options under the Option Scheme.

### **8.4 Waiver of rights**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

### **8.5 Consent**

Impact consents to Invictus producing this Deed to the Court.

**8.6 Further acts and documents**

Impact must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to Invictus) required by law or reasonably requested by Invictus to give full effect to this Deed and the transactions contemplated by this Deed.

**8.7 Severance and enforceability**

Any provision, or the application of any provision, of this Deed that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed in that or any other jurisdiction.

Executed as a deed poll by )  
**Impact Minerals Limited** ACN 119 062 )  
261 pursuant to section 127 of the )  
Corporations Act: )

  
\_\_\_\_\_  
Signature of Director

*MICHAEL JONES*  
\_\_\_\_\_  
Print name of Director

  
\_\_\_\_\_  
Signature of Director/Secretary

*JAMES COOPER-JONES*  
\_\_\_\_\_  
Print name of Director/Secretary