

28 October 2013

ASX ANNOUNCEMENT



Avalon Minerals Limited (ASX:AVI) ("Avalon" or "Company")

Avalon advises that ASX Limited (**ASX**) has approved the Company's application for a waiver from ASX Listing Rule 7.1 to the extent necessary to issue securities to a substitute underwriter (or underwriters) under a new underwriting agreement (or agreements) within 15 business days from the closing date of the Company's reopened 1 for 1 non-renounceable pro rata rights issue (**Rights Issue**) on the terms set out in Annexure 1.

As announced on 23 October 2013, Avalon has agreed terms with CPS Capital Group Pty Limited (**CPS**) for the partial underwriting of the Rights Issue. The full terms of the underwriting agreement with CPS are set out in Annexure 2.

Avalon notes the announcement made by Phoenix Copper Limited.

For further information please visit www.avalonminerals.com.au

ASX: AVI

REGISTERED OFFICE

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ASX ANNOUNCEMENT



AVALON
MINERALS LTD

Annexure 1

ASX: AVI

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25 October 2013

Mr Khilen Devani
Senior Associate
Allens
Riverside Centre
123 Eagle Street
Brisbane QLD 4000

By Email: Khilen.Devani@allens.com.au

Dear Khilen,

Avalon Minerals Limited ("the Company")

I refer to the application made on behalf of the Company, for a waiver from listing rule 7.1. Set out below is the final decision of ASX Limited.

DECISION

1. Based solely on the information provided, ASX Limited ("ASX") grants Avalon Minerals Limited ("the Company") a waiver from listing rule 7.1 to the extent necessary to issue securities to a substitute underwriter (or underwriters) (together, the "Substitute Underwriter") under a new underwriting agreement (or agreements) (together, the "Substitute Underwriting Agreement") within 15 business days from the closing date of the Company's reopened 1 for 1 non-renounceable pro rata rights issue (the "Rights Issue"), following final orders made by the Takeovers Panel (the "Panel") on 14 October 2013, on the following conditions:
 - 1.1 The Panel approves the appointment of the Substitute Underwriter.
 - 1.2 The full terms of the Substitute Underwriting Agreement are disclosed to the market.
 - 1.3 The revised Rights Issue timetable is acceptable to ASX.
 - 1.4 The terms of this waiver are released to the market immediately.
2. ASX has considered listing rule 7.1 only and makes no statement as to the Company's compliance with other listing rules.

BASIS FOR DECISION

LISTING RULE 7.1

Underlying Policy

3. Listing rule 7.1 protects a listed entity's security holders against dilution of their voting and economic interests in the listed entity by imposing a limit on the number of equity securities that may be issued by the entity without prior security holder approval. The actual number of equity securities that a listed entity may issue without prior ordinary security holder approval is calculated by reference to a formula in listing rule 7.1, and is approximately, 15% of the number of fully paid ordinary securities on issue 12 months earlier. (The formula is more complex than this description indicates, and is set out in full in listing rule 7.1) A number of exceptions from the requirement to limit the number of equity securities that may be issued without prior ordinary security holder approval are permitted under listing rule 7.2 including exception 3 being an issue to make up the shortfall on a pro rata issue to holders of ordinary securities, provided conditions are met including that the issue is made within 3 months of the close of the offer.

Facts and Reasons for Granting the Waiver

4. The Company is undertaking a 1 for 1 non renounceable pro rata rights issue of shares. Under listing rule 7.2 exception 2, an issue under an underwriting agreement to an underwriter of a pro rata issue is to take place within 15 business days after the close of the offer. On the same day that the Company's Offer closed, the Takeovers Panel, on application of a shareholder of the Company, made orders postponing the commencement of deferred settlement of rights issue shares and restricting the issue of rights issue shares without Panel approval. The 15 day period lapsed on 30 September 2013 with the Offer still "frozen" due to the Takeovers Panel orders. On 14 October 2013, the Takeovers Panel has ordered that the rights issue be reopened. The Takeovers Panel has also ordered that the original underwriter must not complete his obligations to acquire the underwritten shares under the underwriting agreement. The Company is seeking an extension of 15 business days from the closing date of the reopened rights issue to issue shares to the Substitute Underwriter. The proposed issue to the Substitute Underwriter is consistent with the principle of listing rule 7.2 exception 2. The extension of time sought is not unreasonable in circumstances and effectively provides a 15 business day period for the issue of shares to the new underwriter.

Yours sincerely

[Sent electronically without signature]

Kerrie Papamihail
Assistant Manager, Listings Compliance (Perth)

28 October 2013

ASX ANNOUNCEMENT



AVALON
MINERALS LTD

Annexure 2

ASX: AVI

REGISTERED OFFICE

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Partial Underwriting Agreement

Avalon Minerals Limited

ACN 123 184 412

Company

and

CPS Capital Group Pty Ltd

ACN 088 055 636

Underwriter

Jackson McDonald
Lawyers
140 St Georges Terrace
Perth Western Australia 6000

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Agreement dated

23 OCTOBER

2013

Parties

Avalon Minerals Limited ACN 123 184 412 of 65 Park Road, Milton in the state of Queensland (Company)

CPS Capital Group Pty Ltd ACN 088 055 636 of Level 45, 108 St Georges Terrace, Perth in the state of Western Australia (Underwriter)

Recitals

- A. The Company is listed on ASX and all of its fully paid ordinary shares have been granted quotation on ASX.
- B. As at the date of this Agreement, the issued capital of the Company comprised 827,367,911 Shares and 52,800,000 Options.
- C. On 1 October 2013, pursuant to interim orders of the Takeovers Panel dated 27 September 2013, the Company issued 212,303,648 Shares under the Rights Issue at the Issue Price, raising a total of A\$2,123,036.
- D. Pursuant to the final orders of the Takeovers Panel dated 14 October 2013, the Company proposes to raise a further A\$3,762,370 under the Rights Issue by offering 376,236,975 New Shares at the Issue Price in accordance with the terms and conditions of the Rights Issue.
- E. The Underwriter has agreed to underwrite the Underwritten Amount in respect of the 376,236,975 New Shares that remain to be issued under the Rights Issue, on the terms and conditions set out in this Agreement.

The parties agree

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means this underwriting agreement.

Allocation Date means the date specified in the Timetable, being the date New Shares are issued to persons who have submitted Applications in accordance with clause 4.1 and Applications in accordance with clause 5.1 or such other date as the Underwriter and the Company agree in writing.

Application means an application to subscribe for or receive the New Shares.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given to it in Division 2 of Part 1 of the Corporations Act.

ASX means the Australian Securities Exchange operated by ASX Limited ABN 98 008 624 691.

Authorisation includes any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with any Governmental Agency.

Board means the board of Directors.

Business Day means a day:

- (a) that is a business day as defined in the Listing Rules; and
- (b) on which banks are open for general banking business in Perth, Western Australia.

Certificate means a letter from the Company to the Underwriter in the form set out in Schedule 1.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit, or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Closing Date means the closing date of the Rights Issue as specified in the Timetable, or such other date as the Underwriter and the Company agree in writing.

Completion means the date on which the last of the New Shares is issued in accordance with the Rights Issue.

Constitution means the constitution of the Company lodged with ASIC.

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

Director means a director of the Company.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement, or any other security arrangement or any other arrangement having the same effect.

Event of Insolvency means any of the following events occurring in relation to a party:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- (b) the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act;
- (c) the party ceases to carry on business; or

- (d) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction.

Firm Sub-Underwriters means those persons who have entered into any sub-underwriting agreement with the Underwriter in respect of the Rights Issue.

Force Majeure means any act of God, war, revolution, or any other unlawful act against public order or authority, an industrial dispute, a governmental restraint, or any other event which is not within the control of the parties or any of them.

Governmental Agency means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board or other governmental or quasi-governmental, judicial, administrative, monetary or fiscal authority, whether statutory or not.

Group Company means the Company and each Subsidiary.

Indemnified Parties means the Underwriter and its Related Bodies Corporate, together with any sub-underwriters procured under clause 2.2, and their respective directors, officers, employees, affiliates, agents and advisers.

Issue Price means A\$0.01 per New Share.

Law means any statute, ordinance, code, regulation, law, by-law, local law, plan, planning scheme, local structure plan, official directive, order, instrument, undertaking, judicial, administrative or regulatory decree, judgement, ruling or order.

Listing Rules means the Listing Rules of ASX.

Losses has the meaning given in clause 12.2(a).

Material Adverse Effect means:

- (a) a material adverse effect on the outcome of the Rights Issue or on the subsequent market for the New Shares (including, without limitation, matters likely to have a material adverse effect on a decision of an investor to invest in New Shares);
- (b) a material adverse effect on the financial condition, trading or financial position, performance, profits and losses, results, prospects, business or operations of the Company and its Subsidiaries either individually or taken as a whole; or
- (c) a material adverse effect on the tax position of the Company and its Subsidiaries either individually or taken as a whole.

Moratorium Period means the period of 3 months from the date of this Agreement.

New Share means a Share offered under the Rights Issue which remains to be issued as at the date of this Agreement, being one of a total of 376,236,975 Shares.

Official List means the official list of ASX.

Opening Date means the opening date of the Rights Issue as specified in the Timetable or such other date as the Underwriter and the Company agree in writing.

Option means an option to acquire a Share.

Prescribed Occurrence means:

- (a) a Group Company converting all or any of its shares into a larger or smaller number of shares;
- (b) a Group Company resolving to reduce its share capital in any way;
- (c) a Group Company:
 - (i) entering into a buy back agreement; or
 - (ii) resolving to approve the terms of a buy back agreement under section 257C or section 257D of the Corporations Act;
- (d) a Group Company making an issue of, or granting an option to subscribe for, any of its shares, or agreeing to make such an issue or grant such an option other than the Rights Issue;
- (e) a Group Company issuing, or agreeing to issue, convertible notes;
- (f) a Group Company disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (g) a Group Company charging, agreeing to charge, the whole, or a substantial part, of its business or property;
- (h) a Group Company resolving that it be wound up;
- (i) the appointment of a liquidator or provisional liquidator to a Group Company;
- (j) the making of an order by a court for the winding up of a Group Company;
- (k) an administrator of a Group Company, being appointed under sections 436A, 436B or 436C of the Corporations Act;
- (l) a Group Company executing a deed of company arrangement; or
- (m) the appointment of a receiver, or a receiver and manager, in relation to the whole or a substantial part, of the property of a Group Company.

Quotation means quotation of the New Shares on the Official List.

Quotation Date means the date by which the Company must apply to ASX for Quotation so specified in the Timetable or such other date as the Underwriter and the Company agree in writing.

Recipient means a person to whom a Share is issued under the Rights Issue.

Related Party has the meaning given to it in Chapter 2E of the Corporations Act.

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

Relevant Interest has the meaning given to it in Chapter 6 of the Corporations Act.

Rights Issue means the pro rata non-renounceable entitlement offer of 588,540,623 Shares at an issue price of A\$0.01 per Share to shareholders of the Company, of which 212,303,648 Shares have been issued as at the date of this Agreement.

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

Shortfall Notice means a written notice from the Company to the Underwriter specifying the number of Shortfall Shares.

Shortfall Notice Deadline Date means the day specified in the Timetable as the date by which the Company must give the Underwriter the Shortfall Notice accompanied by the Certificate.

Shortfall Settlement Date means the day specified in the Timetable as the date by which the Underwriter must lodge Applications for Shortfall Shares.

Shortfall Shares means, subject to the deeming provisions of clause 4.2, the Underwritten Shares for which Valid Applications have not been received by 5.00pm on the Closing Date.

Subsidiary means a subsidiary of the Company within the meaning of the Corporations Act.

Termination Event means an event of termination as described in clause 11.1.

Timetable means the timetable set out in Schedule 2 to be approved (or amended if required) by ASX and as may from time to time be varied by written agreement by the Company and the Underwriter (each party acting reasonably) and ASX (if applicable).

Underwritten Amount means up to A\$2,100,000.

Underwritten Shares means up to 210,000,000 New Shares to be issued to the Firm Sub-Underwriters, such number to be reduced to the extent that the number of Shares issuable by the Company to the Firm Sub-Underwriters is limited by the representations, warranties and undertakings given by the Company in clause 3.1 and the Underwriter in clause 7.5.

Valid Application means an Application for New Shares:

- (a) that is received by the Company or a representative acting on its behalf on or before 5.00pm on the Closing Date at a place specified in the Application;
- (a) that is not withdrawn before it ceases to be capable of being withdrawn; and
- (b) in respect of which payment of the Issue Price for the relevant number of New Shares is received and is cleared (either before or after the Closing Date) when presented (either before or after the Closing Date) for payment by the relevant financial institution on which the payment is drawn.

1.1 Interpretation

In this Agreement:

- (a) headings are for convenience; and
unless the context indicates otherwise:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) 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;
- (d) 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;
- (e) a reference to:
 - (i) a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement;
 - (ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (iii) an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether in writing or not, and is to that agreement as varied, novated, ratified or replaced from time to time;
 - (iv) a document includes an agreement in writing and any deed, certificate, notice, instrument or document of any kind;
 - (v) a document in writing includes a document recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
 - (vi) 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;
 - (vii) 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;
 - (viii) 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;
 - (ix) a right includes a power, remedy, authority, discretion or benefit;

- (x) conduct includes an omission, statement or undertaking, whether in writing or not;
- (xi) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and
- (xii) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (f) the word "includes" in any form is not a word of limitation;
- (g) the words "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or to examples of a similar kind;
- (h) a reference to a day is to a period of time commencing at midnight and ending 24 hours later;
- (i) If 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
- (j) a reference to "\$" or "dollar" is to Australian currency.

2. Appointment of Underwriter

2.1 Underwriting

The Company appoints the Underwriter to underwrite the subscription of the Underwritten Shares at the Issue Price and the Underwriter agrees to underwrite the subscription of the Underwritten Shares on the terms and conditions of this Agreement.

2.2 Procuring of Firm Sub-Underwriters

The Underwriter may, in consultation with the Company, procure the Firm Sub-Underwriters to sub-underwrite the Underwritten Shares as the Underwriter in its absolute discretion thinks fit.

2.3 Allocation of Shortfall Shares

The Underwriter has the right to nominate and determine (in consultation with the Company) who is to receive the Shortfall Shares.

3. Obligations of the Company

3.1 Conduct of the Rights Issue

The Company must:

- (a) **Certificate:** deliver to the Underwriter a completed and signed Certificate at or immediately after the close of business on the day before the Opening Date;
- (b) **Timetable:** make and conduct the Rights Issue in accordance with the Timetable; and

- (c) **Takeovers Panel:** conduct the Rights Issue in accordance with the final decision of the Takeovers Panel dated 14 October 2013.

3.2 Application for Quotation

The Company must:

- (a) apply to ASX for Quotation of the New Shares; and
- (b) do everything reasonably necessary, including the execution of documents, to ensure that ASX grants Quotation, subject only to standard conditions.

4. Processing of applications and issue of Shares

4.1 Applications and Issue of Shares

The Company must:

- (a) **Final list:** cause a final list of Valid Applications to be delivered to the Underwriter as soon as possible after the Closing Date and in any event, by the Allocation Date;
- (b) **Acceptance of Valid Applications:** on or before the Allocation Date, accept all Valid Applications except that, where Valid Applications are received for more than the number of New Shares offered under the Rights Issue, the Company may, in consultation with the Underwriter, scale back or reject any Valid Applications;
- (c) **Settlement of New Shares:** issue the New Shares in accordance with clause 5.3; and
- (d) **Comply with Law, issuer holding statements and refunds:** complete the issue of New Shares, dispatch holding statements for the New Shares, and dispatch refund cheques (if any) in accordance with the Listing Rules, Constitution and Corporations Act.

4.2 Valid Applications to go in relief of Underwriter's obligations

All Valid Applications received by the Company from all sources will be deemed to have been accepted in full by the Company (up to the number of New Shares offered under the Rights Issue) and will go in relief of the obligations (if any) of the Underwriter under this Agreement.

4.3 Retention of subscription moneys

The Company must retain all subscription moneys in trust for the relevant applicants for New Shares in accordance with section 722 of the Corporations Act until the issue of New Shares to that relevant applicant.

4.4 Records

The Company must maintain (and permit the Underwriter to inspect at any reasonable time) accurate records of the receipt of Applications, the banking of application moneys, the processing of Applications and the dispatch of holding statements in respect of the New Shares issued or to be issued under the Rights Issue.

5. Shortfall Shares

5.1 Applications

If:

- (a) the Company has complied with its obligations under this Agreement and has not breached any of the warranties or representations made by it in this Agreement (other than a breach which is capable of remedy and which is remedied by the Company promptly following a request by the Underwriter);
- (b) this Agreement has not been terminated by the Underwriter under clause 11;
- (c) the Company has not received Valid Applications for all of the Underwritten Shares on or before the Closing Date; and
- (d) the Company has, after the Closing Date but before 5.00pm on the Shortfall Notice Deadline Date, given to the Underwriter a Shortfall Notice accompanied by a completed and signed Certificate dated the date of that Shortfall Notice,

(each a "condition subsequent") then, but not otherwise, the Underwriter must lodge or cause to be lodged Applications for the Shortfall Shares with the Company on or before 5.00pm on the Shortfall Settlement Date accompanied by a cheque or cheques in payment of the Issue Price for the Shortfall Shares.

5.2 Late clearances

For the purposes of the definition of "Shortfall Shares" and clause 5.1(c) it is agreed that if an Application satisfies paragraphs (a) to (c) of the definition of "Valid Application" in circumstances where the due clearance on presentation under paragraph (c) occurs after the Closing Date then that Application shall nevertheless be considered a Valid Application received by 5.00pm on the Closing Date.

5.3 Issue of New Shares

Subject to the Company receiving Valid Applications for Shortfall Shares in accordance with clause 5.1, the Company must take all reasonable steps to issue all of the New Shares on or before the Allocation Date to:

- (a) persons to whom allocations have been made under clause 4.1(b); and
- (b) persons who have applied for Shortfall Shares under clause 5.1,

for which Valid Applications have been received by or on behalf of the Company.

6. Moratoria

6.1 Moratorium on certain actions

The Company must ensure that, except with the prior written consent of the Underwriter whose consent cannot be unreasonably withheld or delayed, no Group Company does any of the following during the Moratorium Period:

- (a) reduces its capital or otherwise alters its capital structure other than as agreed with the Underwriter;

- (b) amends its constitution or any other constituent document except as required by ASX to comply with the Listing Rules, or as required by the Corporations Act;
- (c) passes or takes any steps to pass a resolution under section 260A of the Corporations Act;
- (d) disposes or agrees to dispose of the whole or a substantial part of its business or property;
- (e) charges or agrees to charge the whole or a substantial part of its business or property other than as agreed with the Underwriter or within the ordinary course of business; or
- (f) determines or declares a dividend.

6.2 Moratorium on issue of securities

The Company must ensure that during the Moratorium Period no Group Company proposes or activates any share buyback scheme or arrangement or issues or agrees to issue or indicates in any way that it will or might issue or authorise the issue of any shares, options or other securities or grant to any person any right to subscribe for or to receive or be issued any shares, options or other securities of any Group Company except:

- (a) pursuant to the exercise of options existing at the date of this Agreement; or
- (b) with the prior written consent of the Underwriter, which cannot be unreasonably withheld or delayed.

6.3 No transfer by Directors

The Company will use its best endeavours to ensure that during the Moratorium Period no current or proposed director of any Group Company or their respective associates will sell, dispose of or transfer any securities in the Company held by them as at the date of this Agreement.

7. Representations and warranties

7.1 Company's representations and warranties

As an inducement for the Underwriter to enter this Agreement but subject to clause 7.4, the Company represents, warrants and undertakes to the Underwriter that to the best of its knowledge, information and belief (after due and proper enquiry by the Company), as at the date of this Agreement and at all times up until the Allocation Date (except where a statement refers to a particular date, then such warranty or representation is made only as at that date) each of the following representations and warranties is true, accurate and not misleading:

- (a) **Status:** the Company is a body corporate registered under the Corporations Act;
- (b) **Power:** the Company has the power to enter into and comply with all of the terms and conditions of this Agreement;

- (c) **Authorisations:** the Company has obtained all approvals and authorities that may be required to permit it to enter into this Agreement and to perform the obligations under this Agreement in accordance with its terms;
- (d) **No rights to securities:** no Group Company has issued or has agreed to issue any shares, options, securities or interests other than the New Shares offered under the Rights Issue and no person has or will have any right to subscribe for or to receive or be issued any shares, options, securities or interests of any Group Company other than the New Shares offered under the Rights Issue or as otherwise as disclosed by the Company;
- (e) **Permits:** each Group Company holds all licences, permits and approvals necessary to enable it to carry on each of its businesses;
- (f) **No Encumbrances:** other than as disclosed by the Company, no Group Company has or will have created or agreed to create any Encumbrance over any or all of its assets;
- (g) **No litigation:** other than as disclosed by the Company, there is no litigation, arbitration, industrial or administrative proceedings pending or to the best of the Company's knowledge, threatened, or any judgments, orders or awards of any court or tribunal which could reasonably be expected to have a Material Adverse Effect or question or prohibit the Company's power or authority to enter into or perform its obligations under this Agreement, to issue the New Shares;
- (h) **No Event of Insolvency:** no Event of Insolvency has occurred in relation to any Group Company, nor is there any act which has occurred or any omission made which may result in an Event of Insolvency occurring in respect of a Group Company;
- (i) **Agreement does not result in breach:** the execution and carrying out of this Agreement and the issue of the New Shares will not conflict with or result in a breach of or a default under any of the terms or provisions of any mortgage, deed or trust or other instrument binding on any Group Company and will not violate in any material way any law, regulation, ruling, consent or judgment, order or decree of any governmental agency or body;
- (j) **Binding obligations:** this Agreement constitutes a legal, valid and binding obligation on the Company and is enforceable in accordance with its terms;
- (k) **No breach of material contracts:** no Group Company is in breach in any material respect of any Material Contracts binding on it;
- (l) **No Prescribed Occurrence:** no Prescribed Occurrence exists in respect of any Group Company other than the issue of securities in accordance with the Rights Issue;
- (m) **Certificate correct:** the contents of each Certificate are true and correct as at the date on which it is given;
- (n) **Information:** all information provided to the Underwriter (including any announcements, presentations, advertisements and publicity made or published by the Company in relation to the Rights Issue) by or on behalf of the Company is materially true and correct and is not misleading or deceptive or likely to mislead or deceive and there is no information of which it is aware

that has not been disclosed to the Underwriter which has or is likely to have a Material Adverse Effect;

- (o) **Compliance:** each Group Company, with regard to the Rights Issue and in all other respects, has complied with the provisions of the Corporations Act and all applicable Laws that relate in any way to it and its constitution and any legally binding requirement of ASIC or ASX in all material respects, and the Company has complied with the Listing Rules;
- (p) **Accounts:** the Accounts present a true and fair view of the financial position or trading results of the Relevant Companies as at and for the period ending on the balance date of the Accounts and there has been no adverse change since that date in the trading results or financial position of any of the Group Companies;
- (q) **Constitution:** the Constitution complies with the Listing Rules and the requirements of ASX for the purpose of the Company being admitted to the Official List and the Rights Issue will comply with the Constitution in all material respects;
- (r) **Uncalled capital:** except as disclosed to the Underwriter, no amount is unpaid in relation to any shares issued by the Company;
- (s) **Shares to be fully paid:** all New Shares issued pursuant to the Rights Issue and in accordance with the terms of this Agreement will, from the date of allotment, rank equally in all respects with other fully paid ordinary shares in the Company and will be free of all encumbrances; and
- (t) **Register of members:** the register of members kept by the Company has been diligently and properly kept by it and so far as the Company is aware accurately records the share holdings of its members and their respective last known addresses.

7.2 Notice of breach

The Company must comply with the terms and conditions of this Agreement and shall immediately give notice in writing to the Underwriter of any breach by the Company of this Agreement including any breach of any of the representations, warranties and undertakings contained in this Agreement. Such notification does not limit or affect the liability of the Company for any such breach.

7.3 Acknowledgments

The Company acknowledges that the Underwriter has entered into this Agreement in reliance on the representations, warranties and undertakings given by the Company in this Agreement.

7.4 Underwriter's investigations

The Company is not liable for any inaccuracy in or breach of any of the warranties in this Agreement or any of the representations made elsewhere in this Agreement, if the inaccuracy or breach is, or the facts giving rise to the inaccuracy or breach, were previously disclosed by the Company.

7.5 Underwriter's representations and warranties

As an inducement for the Company to enter this Agreement, the Underwriter represents, warrants and undertakes to the Company that, to the best of its knowledge, information and belief (after due and proper enquiry by the Underwriter), as at the date of this Agreement and at all times up until Completion:

- (a) **Status:** the Underwriter is a body corporate duly registered and validly existing under the Corporations Act;
- (b) **Power:** the Underwriter has the power to enter into and comply with all of the terms and conditions of this Agreement;
- (c) **Authorisations:** the Underwriter has obtained all approvals and authorities that may be required to permit the Underwriter to enter into this Agreement and to perform the obligations under this Agreement in accordance with its terms including the obtaining and holding of all licences and permits required by the Corporations Act;
- (d) **Binding obligations:** this Agreement constitutes a legal, valid and binding obligation on the Underwriter and is enforceable in accordance with its terms;
- (e) **Relevant Interest:** subject to their being changes to the capital structure of the Company other than as contemplated under the Rights Issue, the Rights Issue will not result in any Recipient holding a Relevant Interest in Shares in excess of 19.9%;
- (f) **Related Parties:** no Shortfall Shares will be issued to a Related Party of the Company; and
- (g) **Prohibited Recipients:** no Shortfall Shares will be issued to Tan Sri Abu Sahid Bin Mohamed or Dato Lim Hen Suan or an Associate of either of them.

7.6 Notice of breach

The Underwriter promptly notify the Company of any breach by the Underwriter of this Agreement including any breach of any of the representations, warranties and undertakings contained in this Agreement.

7.7 Acknowledgements

The Underwriter acknowledges that the Company has entered into this Agreement in reliance on the representations, warranties and undertakings given by the Underwriter in this Agreement.

8. Fees and expenses

8.1 Underwriting fee

On Completion, the Company must pay to the Underwriter (or its nominee) an underwriting fee equal to the aggregate of:

- (a) 2% of the gross amount that is raised by the issue of Underwritten Shares, and

- (b) 2% of the gross amount that is otherwise raised by the issue of Shortfall Shares to clients of the Underwriter arranged on a best endeavours basis,

as consideration for its underwriting obligation in accordance with this Agreement. All sub-underwriting and selling fees to third parties will be met by the Underwriter.

8.2 Costs and expenses

- (a) The Company must reimburse the Underwriter for the Underwriter's reasonable out of pocket expenses (including legal expenses) incurred in connection with the Rights Issue, subject to a maximum of \$3,000 (exclusive of GST) for any legal costs, fees and expenses incurred by the Underwriter in connection with this Agreement. The Company must pay these expenses within 14 days of receiving the Underwriter's tax invoice.
- (b) Subject to clause 8.2(a), other than in respect of legal costs, fees and expenses, the Underwriter must seek the Company's prior approval before incurring an expense in excess of \$2,000.

8.3 Interest on overdue fees

Amounts outstanding pursuant to invoices for fees, commissions or expenses shall incur interest at the rate of 10% per annum and shall be calculated daily in arrears from the due date of payment of the outstanding amount.

9. GST

9.1 GST payable

If GST becomes payable by a party to this Agreement (Supplier) on any supply it makes under or in connection with this Agreement:

- (a) any amount payable or consideration to be provided under this Agreement for that supply (Agreed Amount) is exclusive of GST;
- (b) an additional amount will be payable by the party providing consideration for that supply under this Agreement (Recipient), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST Act and payable at the same time and in the same manner as for the Agreed Amount; and
- (c) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST Act) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Agreement.

9.2 Variation

If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Agreement varies from the additional amount it receives from the Recipient under clause 9.1 in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate).

9.3 Definitions

GST, GST Act and other terms used in this clause 9 have any meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time) or any replacement or other relevant legislation and regulations, except GST Act also includes any applicable rulings. Any reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier is a member.

10. Discharge of Underwriter's obligations

All obligations of the Underwriter under this Agreement (other than those in clause 16) are discharged when any of the following events occurs:

- (a) on the date on which the Company receives Valid Applications for all of the Underwritten Shares;
- (b) the Underwriter lodges or causes to be lodged with the Company, applications for Shortfall Shares accompanied by the Issue Price per Shortfall Share, in accordance with clause 5.1;
- (c) on the date the Underwriter terminates this Agreement under clauses Error! Reference source not found. or 11;
- (d) the Company does not give a Certificate in accordance with clause 7.1(m); or
- (e) if allotment of the Shortfall shares has not taken place within 5 Business Days of the Shortfall Settlement Date.

11. Termination

11.1 Termination events

The Underwriter may, without cost or liability to itself and without prejudice to any rights under clauses 7 or 8 or for damages arising out of any breach by the Company of its representations, warranties or obligations under this Agreement, by notice in writing given upon or at any time prior to Completion terminate its obligations under this Agreement if:

- (a) **Indices fall:** the All Ordinaries Index, S&P ASX 300 Metals & Mining Index or the Small Ordinaries Index as published by ASX is at any time after the date of this Agreement 10% or more below its level as at the close of business on the date of this Agreement; or
- (b) **No Quotation:** Quotation has not been granted by the Quotation Date or having been granted, is subsequently withdrawn, withheld or qualified; or
- (c) **Non compliance with disclosure requirements:** it transpires that the Company has not complied with its continuous disclosure obligations pursuant to Chapter 6CA of the Corporations Act; or
- (d) **ASIC application:** an application is made by ASIC for an order under section 1324B of the Corporations Act; or

- (e) **Takeovers Panel:** the Takeovers Panel makes a declaration that circumstances in relation to the affairs of the Company are unacceptable circumstances under Pt 6.10 of the Corporations Act, ~~or an application for such a declaration is made to the Takeovers Panel;~~ or
- (f) **Authorisation:** any authorisation which is material to the Company is repealed, revoked or terminated or expires, or is modified or amended in a manner unacceptable to the Underwriter; or
- (g) **Termination Events:** subject always to clause 11.2, any of the following events occurs:
- (i) **Default:** default by the Company of any of their obligations under this Agreement;
 - (ii) **Incorrect or untrue representation:** any representation, warranty or undertaking given by the Company in this Agreement is or becomes untrue or incorrect;
 - (iii) **Contravention of constitution or Law:** a contravention by a Group Company of any provision of its constitution, the Corporations Act or any other applicable Law or any requirement of ASIC or ASX;
 - (iv) **Restriction on Issue:** the Company is prevented from issuing the New Shares within the time required by the Corporations Act, the Listing Rules, any statute, regulation or order of a court of competent jurisdiction by ASIC, ASX or any court of competent jurisdiction or any governmental or semi governmental agency or authority;
 - (v) **Hostilities:** political or civil unrest not presently existing commences (whether war has been declared or not) or a major escalation in existing hostilities, political or civil unrest occurs (whether war has been declared or not) involving any one or more of Australia, the United States of America, the United Kingdom, any member state of the European Union, Japan, Singapore, or the Peoples Republic of China, or a terrorist act is perpetrated on any of those countries or any diplomatic, military, commercial or political establishment of any of those countries anywhere in the world;
 - (vi) **Adverse change:** an event occurs which gives rise to a Material Adverse Effect;
 - (vii) **Significant change:** a "new circumstance" as referred to in section 719(1) of the Corporations Act arises that is materially adverse from the point of view of an investor;
 - (viii) **Public statements:** without the prior approval of the Underwriter a public statement is made by the Company in relation to the Rights Issue;
 - (ix) **Misleading information:** any information supplied at any time by the Company or any person on its behalf to the Underwriter in respect of any aspect of the Rights Issue or the affairs of any Group Company is or becomes misleading or deceptive or likely to mislead or deceive;

- (x) **Change in Law or policy:** there is introduced, or there is a public announcement of a proposal to introduce, into the Parliament of Australia or any of its States or Territories, any Act or prospective Act or budget, or the Reserve Bank of Australia or any Commonwealth or State authority adopts or announces a proposal to adopt any new, or any major change in, existing, monetary, taxation, exchange or fiscal policy, that adversely impacts on the Rights Issue;
- (xi) **Prescribed Occurrence:** a Prescribed Occurrence occurs;
- (xii) **Suspension of debt payments:** the Company suspends payment of its debts generally;
- (xiii) **Event of Insolvency:** an Event of Insolvency occurs in respect of a Group Company;
- (xiv) **Judgment against a Group Company:** a judgment in an amount exceeding \$250,000 is obtained against a Group Company and is not set aside or satisfied within 7 days;
- (xv) **Litigation:** litigation, arbitration, administrative or industrial proceedings are after the date of this Agreement commenced or threatened against any Group Company, other than any Claims foreshadowed by the Company;
- (xvi) **Board and senior management composition:** there is a change in the composition of the Board or a change in the senior management of the Company before Completion without the prior written consent of the Underwriter which cannot be unreasonably withheld or delayed;
- (xvii) **Change in shareholdings:** there is a material change in the major or controlling shareholdings of a Group Company or a takeover offer or scheme of arrangement pursuant to Chapter 5 or 6 of the Corporations Act is publicly announced in relation to a Group Company;
- (xviii) **Timetable:** there is a delay in any specified date in the Timetable which is greater than 10 Business Days;
- (xix) **Force Majeure:** a Force Majeure affecting the Company's business lasting in excess of 7 days occurs;
- (xx) **Indictable offence:** a director or a senior manager of a Group Company is charged with an indictable offence;
- (xxi) **Certain resolutions passed:** a Group Company passes or takes any steps to pass a resolution under section 254N, section 257A or section 260B of the Corporations Act, or a resolution to amend its constitution without the prior written consent of the Underwriter;
- (xxii) **Capital structure:** any Group Company alters its capital structure in any manner;
- (xxiii) **Breach of material contracts:** any material contract or material agreement as advised to the Underwriter is terminated or substantially modified;

- (xxiv) **Investigation:** any person is appointed under any legislation in respect of companies to investigate the affairs of a Group Company;
- (xxv) **Market conditions:** a suspension or material limitation in trading generally on ASX occurs or any material adverse change or disruption occurs in the existing financial markets, political or economic conditions of Australia, Japan, the United Kingdom, the United States of America or other international financial markets; or
- (xxvi) **Suspension:** the Company is removed from the Official List or the Shares become suspended from quotation on ASX and that suspension is not lifted within 24 hours following such suspension.

11.2 Material Adverse Effect

The Underwriter may not exercise its rights under clause 11.1(g) unless, in the reasonable opinion of the Underwriter reached in good faith, the occurrence of a Termination Event has or is likely to have, or two or more Termination Events together have or are likely to have:

- (a) a Material Adverse Effect; or
- (b) could give rise to a liability of the Underwriter under the Corporations Act or otherwise.

11.3 No prejudice

The exercise by the Underwriter of any of its rights under clause 11 does not prejudice any right the Underwriter may have under clause 7 (other than as provided for in clause 7) or any rights the Underwriter may have to seek damages for loss caused to the Underwriter as a result of a breach by the Company of any warranties, representations or obligations under this Agreement.

11.4 Notification

The Company must immediately notify the Underwriter of the occurrence of any event which will, or which with the giving of notice or lapse of time will, give the Underwriter a right to terminate its obligations under this Agreement.

11.5 Termination by the Company

The Company may without cost or liability to itself and without prejudice to any rights for damages arising out of any breach by the Underwriter of its representations, warranties or obligations under this Agreement, by notice in writing given upon or at any time prior to the Allocation Date terminate its obligations under this Agreement if any of the following events occurs:

- (a) **Default:** default by the Underwriter on any of its obligations under this Agreement; or
- (b) **Incorrect or untrue representation:** any representation, warranty or undertaking given by the Underwriter in this Agreement is or becomes untrue or incorrect.

12. Indemnity

12.1 Underwriter not responsible

- (a) Notwithstanding anything express or implied by this Agreement, the Company acknowledges that it, and not the Underwriter, is solely responsible and liable for the form, contents and correctness of any information, announcements, statements and reports made by it in relation to the Rights Issue.
- (b) Notwithstanding anything express or implied by this Agreement, the Company acknowledges that the Underwriter is not liable for any claims arising from advice given by an Indemnified Party based on information provided to an Indemnified Party by the Company, its officers, employees, agents or advisers or other third parties which is materially misleading, inaccurate or incomplete.
- (c) To the greatest extent permitted by law, no Indemnified Party will have any liability to the Company its officers, employees, agents or advisers or other third parties except for liability that is finally and judicially determined to have resulted primarily from an Indemnified Party's wilful default, misconduct, fraud, gross negligence or breach of contract.

12.2 Indemnity

Subject to clause 12.3, the Company must indemnify and keep indemnified:

- (a) the Underwriter (for itself and as trustee for each of the other Indemnified Parties) and hold them harmless from and against all prosecutions, losses (including loss of profit or losses or costs incurred in preparation for or involvement in or otherwise in connection with any prosecution, investigation, enquiry or hearing by ASIC, ASX or any governmental authority or agency), penalties, actions, suits, claims, expenses, costs (including legal costs and disbursements on an indemnity basis), liabilities, charges, outgoings, payments, demands and proceedings (whether civil or criminal) (Losses) suffered, incurred, paid or liable to be paid directly or indirectly arising out of or in respect of:
 - (i) the Rights Issue;
 - (ii) non-compliance with or breach of any legal requirement of the Listing Rules in relation to any document in respect of the Rights Issue;
 - (iii) any statement, misstatement, misrepresentation, non disclosure, inaccuracy in or omission from any document in respect of the Rights Issue;
 - (iv) any advertising, publicity, announcements, statements and reports in relation to the Rights Issue made with the agreement of the Company; or
 - (v) any breach or failure by the Company to observe any of the terms of this Agreement or any breach of the representations and warranties given by the Company in this Agreement; and
- (b) the Underwriter in respect of any payment made by the Underwriter to reimburse or provide for payment of any Losses suffered personally by an

Indemnified Party in respect of the matters described in clause 12.2(a) or resulting from or attributable to those matters.

12.3 Limit of indemnity

- (a) The indemnities in clause 12.1 do not apply:
- (i) to any penalties or fines which the Underwriter must pay in respect of any contravention of the Corporations Act by the Underwriter or any Indemnified Party not resulting from or attributable to any of the matters described in clause 12.2(a);
 - (ii) to any written research or other report, advertisement, publicity or written announcement made by the Indemnified Party in relation to the Rights Issue without the prior written approval of the Company;
 - (iii) to any other amount in respect of which the indemnities in clause 12.1 would be illegal, void or unenforceable at law; or
 - (iv) in respect of any Losses which result from the wilful default, wilful misconduct, fraud or gross negligence of the person claiming the indemnity.
- (b) If it is alleged that any amount to which an indemnity under clause 12.1 applies results from the wilful default, fraud, or the negligence of the Underwriter or an Indemnified Party, the Company agrees to pay or reimburse the amount in accordance with this clause 12 until such wilful default, misconduct, fraud, gross negligence or breach of contract is established by a Court of final jurisdiction, at which time such amount must be repaid to the Company by the Underwriter..

12.4 Reimbursement of expenses

- (a) Without limiting clause 12.1(b), the Company agrees to reimburse the Underwriter and each Indemnified Party for all costs and expenses (including legal costs on an indemnity basis and disbursements) as they are incurred by the Underwriter and each Indemnified Party, and pay the Underwriter and each Indemnified Party at their standard professional charge out rate for all time spent, in connection with investigating, preparing or defending any claim or potential claim whatsoever relating to or arising out of or in connection with the Rights Issue or in connection with preparing for or being involved in or otherwise relating to any investigations, enquiries, hearings, prosecutions or legal proceedings by the ASIC, ASX or any governmental authority or agency in respect of or arising out of the Rights Issue.
- (b) Without limiting the foregoing, clause 12.4(a) extends to all expenses relating to and time spent in a court as a witness, responding to approaches by Directors of the Company or the ASIC or otherwise for the purpose of defending proceedings brought or which may be brought against the Underwriter or an indemnified Party.

12.5 Benefit of indemnity

Each Indemnified Party shall be entitled to the benefit of this clause 12 and this clause may be enforced on the behalf of each Indemnified Party by the Underwriter.

12.6 No waiver of indemnity

The consent or approval of the Underwriter to any act, matter or thing will not itself constitute the waiver of or in any way prejudice the right to indemnity under clause 12.1.

12.7 Underwriter to notify Company

If the Underwriter receives notice of any act, matter or thing which might give rise to an action, proceeding, enquiry or investigation against it or an Indemnified Party in relation to which the Company would be required to indemnify the Underwriter or the Indemnified Party under clause 12.1, then the Underwriter must notify the Company of the act, matter or thing, giving full details as soon as is reasonably practicable after coming to its attention. Failure of the Underwriter to notify the Company as required does not affect the right of the Underwriter or the Indemnified Parties to be indemnified under clause 12.1.

12.8 Company release

- (a) The Company agrees that no claim may be made by it against the Underwriter or any of the Indemnified Parties and the Company unconditionally and irrevocably releases and discharges the Underwriter and the Indemnified Parties from any claim that may be made by it to recover from the Underwriter or any of the Indemnified Parties any Losses, costs, expenses or damages suffered or incurred by the Company arising directly or indirectly as a result of the participation of the Underwriter or the Indemnified Parties in the Rights Issue, except in relation to matters where those losses, costs, expenses or damages result primarily from any fraud, wilful misconduct, or gross negligence on the part of the Underwriter or any Indemnified Party.
- (b) Where the Company has agreed to limit liability to a third party to the extent that the Company may have a claim against such third party (**Relevant Limitation**), then where loss or damage is suffered by the Company for which the Underwriter would otherwise be liable to the Company together with any such third party, the extent of such loss or damage that will be recoverable by the Company from the Underwriter will:
- (i) be limited so as to be proportionate to the Underwriter's contribution to the overall fault for such loss or damage as agreed by the Company and the Underwriter or Indemnified Parties (and failing agreement as determined by a court of competent jurisdiction); and
 - (ii) be no more than it would have been had any Relevant Limitation not been agreed by the Company.
- (c) The degree to which the Underwriter may rely on the work of any such third party will be unaffected by any Relevant Limitation.

12.9 Contractual contribution

- (a) **Company to contribute:** If for any reason the indemnities contained in this clause 12 are unavailable or insufficient to hold harmless the Underwriter or any of the Indemnified Parties against any Losses (in this clause 12.9 a **Relevant Loss**), other than as a result of the operation of clause 12.3, then the Company agrees to contribute to that Relevant Loss with the Underwriter

or Indemnified Parties in accordance with this clause 12.9 in all cases to the maximum extent allowable by law.

- (b) **Proportional contribution:** The respective proportional contribution of the Company and the Underwriter or Indemnified Parties in relation to a Relevant Loss will be as agreed by the Company and the Underwriter or Indemnified Parties (and failing agreement as determined by a court of competent jurisdiction) having regard to the participation in, instigation of or other involvement of the Company on the one hand (in relation to the proportional contribution of the Company) and the Underwriter or Indemnified Parties on the other hand (in relation to the proportional contribution of the Underwriter or Indemnified Parties) in the act complained of. Without limiting the generality of this paragraph (b), regard must be had to the Underwriter's or Indemnified Parties' and the Company's relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission.
- (c) **Limitation:** The Company agrees with the Underwriter and Indemnified Parties that in no event will the Underwriter or Indemnified Parties be required to contribute under paragraph (b) to any Relevant Loss an aggregate amount that exceeds the fees actually received by the Underwriter under clauses 8.1 and 8.2 of this Agreement.
- (d) **Reimbursement by Company:** If the Underwriter or any of the Indemnified Parties pays an amount in relation to a Relevant Loss where it is entitled to contribution from the Company under this clause 12, the Company agrees promptly to reimburse the Underwriter or Indemnified Parties for that amount.
- (e) **Reimbursement by Underwriter:** If the Company pays an amount in relation to a Relevant Loss where it is entitled to contribution from the Underwriter or Indemnified Parties under this clause 12 the Underwriter must promptly reimburse the Company for that amount.

12.10 Indemnity survives termination

Each indemnity in this Agreement is a continuing obligation, separate and independent from all the other obligations of the parties and survives termination of this Agreement for whatever cause, including without limitation, termination by the Underwriter under clause 11 of its obligations under this Agreement, other than termination by the Company under clause 11.5.

13. Enquiries by Underwriter

13.1 Additional Information

The Company will promptly provide to the Underwriter any information and documents requested by the Underwriter at any time and from time to time up to the Allocation Date concerning:

- (a) the business assets, liabilities, financial position and prospects of any Group Company;
- (b) the Rights Issue;
- (c) the application for Quotation;

- (d) the Underwriter's risks, liabilities or duties in respect of the Rights Issue; or
- (e) the Underwriter's obligations under this Agreement.

13.2 Access

The Company agrees to allow the Underwriter and its advisers full and free access to the premises, books and records of any Group Company at all reasonable times:

- (a) prior to the Allocation Date; or
- (b) during any regulatory enquiry or litigious proceedings in relation to the Rights Issue,

to enable the Underwriter to obtain any information about any Group Company and any matters which the Underwriter reasonably requires in relation to the Rights Issue. The Company must provide any information, assistance and facilities that the Underwriter reasonably require for those purposes.

13.3 Confidentiality

The Underwriter agrees not to, and will procure that its Indemnified Parties and professional advisers do not, disclose any information or document provided or made available under clauses 13.1 and 13.2 and to maintain strict confidentiality in relation to them, except to the extent that the information or document is available to the public generally or the Underwriter are required to disclose the information or document in accordance with its obligations under the law, or under the Listing Rules or the information or document is required in connection with any claim, proceedings or investigation of the type referred to in clause 12.

14. Notices

- (a) Any notice or other communication which must be given, served or made under or in connection with this Agreement:
 - (i) must be in writing;
 - (ii) is sufficient if executed by the party giving, serving or making the notice or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party;
 - (iii) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to the address, or sent by facsimile to the number of that person set out below (or at such other address or number as is notified in writing by that person to the other parties from time to time); and
 - (iv) will be deemed to be served, given or made:
 - A. (in the case of prepaid post) on the second Business Day after the date of posting;
 - B. (in the case of facsimile) when the sender receives a transmission report confirming successful transmission where the facsimile is transmitted in full between 9.00am and 5.00pm on a Business Day, or otherwise, at 9.00am on the next

Business Day after the sender receives a transmission report confirming successful transmission; and

C. (in the case of delivery by hand) on delivery.

(b) The relevant notice details are as follows:

Party: Avalon Minerals Limited

Contact: <Name>

Address: 65 Park Road, Milton, Qld 4064

Fax No: 61 7 3368 9899

Party: CPS Capital Group Pty Ltd

Contact: Gary Castledine

Address: Level 45, 108 St Georges Terrace, Perth WA 6000

Fax No: 61 8 9223 2211

15. Time

15.1 Time is of the essence

Subject to clause 15.2, time is of the essence of this Agreement.

15.2 Force Majeure

If between the Opening Date and the Shortfall Notice Deadline Date there occurs or subsists an event of Force Majeure affecting the delivery of mail or the transmission by facsimile or communication by telephone within Australia, the time stipulated by this Agreement for the fulfilment by the parties of their obligations, the Closing Date is extended by the period of the event of Force Majeure.

16. Confidentiality

Each of the parties will procure that neither it nor any of its Related Bodies Corporate will make any public announcement or disclosure to any person in relation to this Agreement or information of which it has become aware in connection with this Agreement unless it first consults with and obtains the agreement in writing of the other parties, which agreement will not be unreasonably withheld or delayed, save that each party may disclose to the extent:

- (a) that the same is required by law, the Listing Rules or a Governmental Agency;
- (b) required to make disclosures to the directors, secretary, professional advisers and bankers of that party and its Related Bodies Corporate so long as the party uses all reasonable endeavours to ensure that the matters disclosed are kept confidential; and
- (c) necessary to provide information to potential sub-underwriters so long as the party uses all reasonable endeavours to ensure that the matters disclosed are kept confidential.

17. General

17.1 Governing law

This Agreement is governed by and is to be construed according to the laws of Western Australia.

17.2 Jurisdiction

Each of the parties irrevocably:

- (a) submits to and accepts generally and unconditionally the non exclusive jurisdiction of the courts and appellate courts of Western Australia with respect to any legal action or proceedings which may be brought at any time relating in any way to this Agreement; and
- (b) each of the parties irrevocably waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that the action or proceeding has been brought in an inconvenient forum.

17.3 Severability

Any provision of this Agreement which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

17.4 Amendments

This Agreement may not be modified, amended or otherwise varied except by a document in writing signed by or on behalf of each of the parties.

17.5 Exercise of rights

- (a) A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its subsequent exercise.
- (b) The exercise by the Underwriter of any of its termination rights under clause 11 does not prejudice any rights the Underwriter may have:
 - (i) under clause 7 to seek damages for loss caused to the Underwriter as a result of a breach by the Company of this Agreement; or
 - (ii) to an indemnity under clause 12.

17.6 Remedies cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

17.7 Enforcement of indemnities

It is not necessary for a party to make payment before enforcing a right of indemnity conferred by this Agreement.

17.8 Assignment

The rights and obligations of a party under this Agreement cannot be assigned without the prior written consent of the other party which consent must not be unreasonably withheld.

17.9 Waiver

No waiver of one breach of any term or condition of this Agreement will operate as a waiver of another breach of the same or any other term or condition of this Agreement. Delay by either party in exercising its rights under this Agreement does not amount to a waiver of those rights.

17.10 Written agreement, waiver, consents, approvals

Any agreement, waiver, consent or approval given by a party under this Agreement will only be effective and only binds that party if it is given in writing and executed by that party or on its behalf by an officer for the time being of that party.

17.11 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by the other party to carry out and effect the intent and purpose of this Agreement.

17.12 Approvals

Subject to any law to the contrary and unless this Agreement expressly provides otherwise, where the doing or execution of any act, matter or thing is dependent on the consent or approval of a party, that consent or approval may be given or withheld in the absolute discretion of that party or may be given subject to such conditions as that party thinks fit in its absolute discretion.

17.13 Counterparts

This Agreement may be executed in any number of counterparts (whether in original or a copy transmitted by fax), all of which taken together constitute one and the same document.

17.14 Merger

- (a) The rights and obligations of the parties in respect of representations, warranties, undertakings and indemnities in this Agreement will be continuing representations, warranties, undertakings and indemnities and accordingly will not be merged or extinguished by or on completion of the Rights Issue, or be prejudiced or affected by any investigation or examination made by or on behalf of the Underwriter and will survive the termination of this Agreement.
- (b) Notwithstanding Completion the provisions of this Agreement will remain in full force and effect as to the obligations of the parties remaining to be performed after Completion.

17.15 Entire agreement

This Agreement shall constitute the sole understanding of the parties with respect to the subject matter and supersedes and replaces all other agreements with respect thereto.

17.16 Rights cumulative

The rights of the Underwriter under this Agreement are cumulative and are in addition to any other rights of the Underwriter, including those rights that are contained in the mandate letter between the Company and the Underwriter in respect of management of the Shortfall. To the extent of any conflict between the terms of such mandate letter and the terms of this Agreement, the terms of the mandate letter prevail.

Schedule 1
Form of Certificate

CPS Capital Group Pty Ltd
Level 45
108 St Georges Terrace
PERTH WA 6000

Dear Sir

Certificate - Underwriting Agreement

We state that as at <date>, to the best of our knowledge after due enquiry none of the events referred to in clause 12.1 of the Partial Underwriting Agreement dated <date> between Avalon Minerals Limited ACN 123 184 412 (Company) and CPS Capital Group Pty Ltd (Underwriter) has occurred or, if a Termination Event has occurred, that before the date of the Certificate, the same has been disclosed in writing to the Underwriter and the Underwriter has indicated in writing to the Company that it has not, in relation to that Termination Event, formed the opinion described in clause 12.2 of the Underwriting Agreement.

Terms defined in the Underwriting Agreement have the same meaning when used in this Certificate.

.....
Signature of Director

.....
Signature of Director or Company Secretary

.....
Name of Director

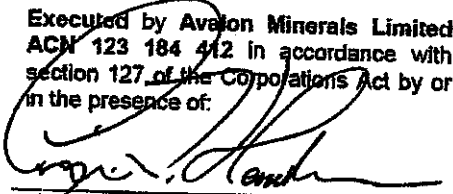
.....
Name of Director or Company Secretary

Schedule 2**Timetable**

Opening Date	22 August 2013
Quotation Date	23 August 2013
Closing Date	<Date>
Shortfall Notice Deadline Date (date by which the Company must deliver to the Underwriter the Shortfall Notice and Certificate)	<Date>
Shortfall Settlement Date (date by which the Underwriter must lodge Applications for Shortfall Shares)	<Date>
Allocation Date (the last day for the allocation and issue of the New Shares)	<Date>
Despatch of holding statements for New Shares	<Date>

Executed as an agreement

Executed by Avalon Minerals Limited
ACN 123 184 412 in accordance with
section 127 of the Corporations Act by or
in the presence of:



Signature of Director

CRISPIN JOHN ANDERSON

Name of Director in full

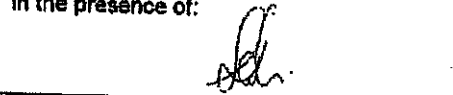


Signature of Director or Secretary

Paul Niardone

Name of Director or Secretary in full


Executed by CPS Capital Group Pty Ltd
ACN 088 055 636 in accordance with
section 127 of the Corporations Act by or
in the presence of:



Signature of Director

Gary Colectine

Name of Director in full



Signature of Director or Secretary

Tony Lunningham

Name of Director or Secretary in full