

# Offer Management Agreement Summary

## 1 Offer Management Agreement

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The Offer Management Agreement (**OMA**) is dated 16 May 2023.

The OMA relates to the offer by Commonwealth Bank of Australia (**Issuer**) of CommBank PERLS XVI Capital Notes (**PERLS XVI**), in Australia to raise approximately A\$750 million, with the ability to raise more or less (**Offer**).

Any capitalised term used but not defined in this summary has the meaning given to it in the prospectus lodged with ASIC in relation to the Offer on 16 May 2023 (**Prospectus**), which can be obtained from [commbank.com.au/perls](http://commbank.com.au/perls).

### 1.1 Arranger

Commonwealth Bank of Australia (Capital Markets Division) (**CBA Markets**) (the **Arranger**) agrees to act as arranger to the Offer including providing certain settlement support in respect of the bookbuild.

### 1.2 Joint Lead Managers

CBA Markets, ANZ Securities Limited, Bell Potter Securities Limited, Morgans Financial Limited, Morgan Stanley Australia Securities Limited, National Australia Bank Limited, Ord Minnett Limited, Shaw and Partners Limited, UBS AG, Australia Branch and Westpac Institutional Bank (a division of Westpac Banking Corporation) (each a **JLM**) agree to act as joint lead managers including providing certain settlement support in respect of their respective firm allocations.

### 1.3 Co-managers

The Issuer has the ability to appoint co-managers to the Offer.

### 1.4 Fees and Expenses

- (a) (**Arranger Fees**) Subject to the JLMs complying with their obligations under the OMA, the Issuer must pay to the Arranger the fees to be agreed between the Issuer and the Arranger, as detailed in the Prospectus.
- (b) (**JLM Fees**) Subject to paragraph (g) below, if a JLM (including a JLM that is the Arranger) subscribes for and settles (or procures subscriptions which are settled) the PERLS XVI which have been allocated to it on a firm basis (**JLM Allocation**) in full, the Arranger must pay (out of the funds received from the Issuer under paragraph (a) above) to that JLM:
  - (i) a management fee of 0.50% in respect of the gross proceeds of their JLM Allocation; and
  - (ii) a selling fee equal to 0.75% of the gross proceeds of their JLM Allocation.
- (c) (**co-managers selling fee**) Subject to paragraph (g) below, if a co-manager is appointed and subscribes for and settles (or procures subscriptions which are

settled) the PERLS XVI which have been allocated to it under the bookbuild (**Co-Manager Allocation**) in full, the Arranger must pay on behalf of the Issuer (out of the funds received under paragraph (a)) to that co-manager a selling fee equal to 0.75% of the gross proceeds of their Co-Manager Allocation.

- (d) (**Participating Broker selling fee**) Subject to paragraph (g) below, if a Participating Broker subscribes for and settles (or procures subscriptions which are settled) its allocation of PERLS XVI set out in the bookbuild supplement (**Participating Broker Allocation**) in full, the Arranger must pay on behalf of the Issuer (out of the fees received under paragraph (a)) to that Participating Broker a selling fee of 0.75% of the gross proceeds of the Participating Broker Allocation.
- (e) (**Cornerstone Investor fees**) Subject to paragraph (g) below, if the Arranger subscribes for and settles (or procures subscriptions which are settled) an allocation of securities in its JLM Allocation on behalf of a cornerstone investor whose identity is agreed with the Issuer in advance (**Cornerstone Investor**) then, subject to the satisfaction of certain conditions determined by the Issuer and advised by the Issuer to the Arranger including, but not limited to, a minimum bid under the Bookbuild and a minimum holding period, the Arranger must pay the Cornerstone Investor a fee on behalf of the Issuer (out of the funds received in paragraph (a)) of up to 0.75% of the gross proceeds of that Cornerstone Investor's allocation and to be agreed between the Issuer and the Arranger, which fee may vary depending on the length of time for which the Cornerstone Investor holds its PERLS XVI. No fees will be paid to the Arranger under paragraph (b) in respect of any allocation in its JLM Allocation to a Cornerstone Investor unless the Issuer determines otherwise in its sole discretion.
- (f) (**Rebates**) The JLMs must not rebate any part of the fee described in the OMA to any investor or external third party (other than investors allowed to participate in the bookbuild or Cornerstone Investors), unless that party is an agreed broker, planner or affiliate of the JLM or unless the Issuer and the Arranger have given prior written approval.
- (g) (**Shortfall**) In the event a participant in the Bookbuild (such as a Participating Broker), JLM or co-manager does not subscribe for and settle (or procure subscriptions which are settled for) the allocation of securities allocated to it in its allocation in full, no fees will be payable on the shortfall amount.
- (h) (**GST**) Fees payable by the Issuer to the Arranger and by the Arranger to the JLMs, co-managers, Participating Brokers and Cornerstone Investors are exclusive of any GST.
- (i) (**Expenses**) The Issuer has also agreed to reimburse the JLMs for all reasonable costs, charges and expenses (except for their legal and tax advice fees) of and incidental to any aspect of the Offer or the OMA, provided that the JLMs seek approval of the Issuer prior to incurring any costs or incidental expenses in excess of \$5,000. Payment of costs are to be paid as soon as reasonably practicable after a request for payment or reimbursement is made by a JLM.

## 1.5 Representations and Warranties

- (a) Each of the parties represent and warrant to each other party that, amongst other things:

- (i). **(status)** it is validly created and existing under relevant laws and it has the power and authority to own its property and to carry on its business as now conducted or contemplated;
  - (ii). **(power)** it has the power to enter into and perform its obligations under all documents that relate to the Offer (**Transaction Documents**);
  - (iii). **(authorisation)** it has taken all necessary action to authorise the entry into and observance and performance of its obligations under the Transaction Documents;
  - (iv). **(documents binding)** each Transaction Document is its valid and binding obligation, enforceable in accordance with its terms;
  - (v). **(compliance with Regulation S)** it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell and will not submit bids for, the PERLS XVI except to persons that it reasonably believes are outside the United States, and are not acting for the account or benefit of, any US Person;
  - (vi). **(no directed selling efforts)** none of it or any of its affiliates (as defined in Rule 405 under the US Securities Act) or any other person acting on its or their behalf (other than the JLMs, the Brokers and their respective Affiliates, as to whom the Issuer makes no representation) has engaged or will engage in any directed selling efforts within the meaning of Rule 902 of Regulation S under the US Securities Act with respect to the PERLS XVI; and
  - (vii). **(notices)** at or prior to the confirmation of sale of any PERLS XVI, it will have sent to each distributor or other person receiving a selling concession, fee or other remuneration that purchases PERLS XVI from it during the distribution compliance period a confirmation or notice substantially to the effect that PERLS XVI must not be offered or sold within the United States or for the account of a US Person.
- (b) The Issuer represents and warrants, and undertakes to, to each of the JLMs that, amongst other things:
- (i). **(accounts)** its most recent consolidated audited financial statements give a true and fair view of its state of affairs;
  - (ii). **(no litigation)** except as disclosed in the Prospectus or to the ASX prior to the date of the OMA, to the best of its knowledge after due enquiry and belief, no litigation, arbitration, tax claim, dispute, regulatory action or administrative proceeding is current or pending or, to its knowledge, threatened, against or affecting it or its property (or of any member of the Group), the adverse determination of which would have a material adverse effect on its ability to comply with its obligations under the Transaction Documents;
  - (iii). **(no event of insolvency)** no event of insolvency has occurred in relation to the Issuer, nor is there any act which has occurred or any omission made which may result in an event of insolvency occurring, in respect of the Issuer;

- (iv). **(no default)** it is not: (A) in default under any document or agreement binding on it or its property; or (B) in default under any applicable law, regulation (or similar), which has had or would likely have a material adverse effect on its ability to comply with its obligations under the Transaction Documents;
- (v). **(no misrepresentation)** so far as it is aware (having made due enquiry of appropriate senior management of the Issuer), (A) all written information provided by its officers or agents to any of the JLMs in or in connection with the Offer documents and materials was true when given in all material respects and was not misleading, by omission of information or otherwise, in any material respect when given; and (B) it has fully disclosed to the JLMs in writing all material information relating to it and the Offer documents and materials which is relevant to the assessment of the nature and amount of risk assumed by the JLMs in respect of the Offer documents and materials in respect of the PERLS XVI;
- (vi). **(ranking)** all PERLS XVI will constitute unsecured and subordinated obligations of the Issuer ranking pari passu amongst themselves;
- (vii). **(no immunity)** it does not enjoy legal immunity in Australia or any other jurisdiction in which it legally or beneficially owns assets;
- (viii). **(no trustee)** it does not enter into any Transaction Document in its capacity as a trustee of any trust or settlement;
- (ix). **(Offer materials)** the Offer materials comply with applicable Australian law and the issue and distribution of the Offer materials will not constitute misleading or deceptive conduct or conduct that is likely to mislead or deceive;
- (x). **(DDO)** it complies with DDO in relation to the Offer and PERLS XVI;
- (xi). **(Deed Poll)** the Deed Poll complies with all applicable Australian law;
- (xii). **(quotation)** the PERLS XVI are eligible to be quoted on ASX under the ASX Listing Rules and other requirements of ASX;
- (xiii). **(business of the Issuer)** except as disclosed in the Offer documents or to the ASX prior to the date of this agreement, since the last balance date: (A) the business of the Issuer has been carried on, and it has not entered into any commitments which are material or onerous other than, in the ordinary and usual course; and (B) there has been no material adverse change in, nor any matter (financial or otherwise) which has materially adversely affected, the assets, total liabilities or financial condition or profitability of the Issuer and its controlled entities **(Group)**;
- (xiv). **(due diligence)** it has conducted, and will continue until the Issue Date to conduct, the due diligence investigations;
- (xv). **(transactions permitted)** the conduct of the Offer, entry into, and the observance and performance of obligations under the Transaction Documents, and the carrying out of the transactions

- contemplated by those Transaction Documents, do not and will not violate any provision of: (A) any applicable law or any judgment (or similar) of any government body or court binding on it or its material subsidiaries (except where such violation could not have any adverse effect on the validity or enforceability of, or the ability of the Issuer to perform any of its obligations under, the Transaction Documents), (B) its constitution or other constituent documents, or (C) any other instrument, arrangement or agreement which is binding upon it or its property, except where such violation could not have any adverse effect on the validity or enforceability of, or the ability of the Issuer to perform, any of its obligations under the Transaction Documents;
- (xvi). **(winding up)** it will not at any time up to and including the Issue Date, pass any resolution that it be wound up, enter into any scheme or composition with or for the benefit of its creditors, have a receiver or manager appointed to the whole or any part of its assets or undertakings, permit any breach or default whereby it is liable to be wound up or have an administrator appointed to it;
- (xvii). **(anti-corruption)** none of the Issuer, any of its affiliates or, to the knowledge of the Issuer, any director, officer, employee or other person acting on behalf of the Issuer or any of its affiliates (other than the JLMs) has: (A) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (B) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (C) made, offered or promised to make, or authorized the payment or giving of any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money or anything of value, in each case, in violation of any applicable law including, but not limited to the U.S. Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010 (**Anti-Corruption Acts**), or (D) violated or is in violation of any provision of any applicable anti-bribery or anti-corruption law, rule or regulation enacted in any jurisdiction (including, without limitation, the Anti-Corruption Acts);
- (xviii). **(anti-money laundering)** except as disclosed in the Offer documents or to the ASX prior to the date of the OMA, (A) the operations of the Issuer and its affiliates are and have been conducted at all times in compliance in all material respects with the money laundering statutes of Australia and any other applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by a government body, (collectively, the **Money Laundering Laws**) to the extent that they apply to the Issuer and its Affiliates and (B) no action, suit or proceeding by or before any court or government, governmental department or other body, governmental, semi-governmental or judicial person or a person (whether autonomous or not) who is charged with the administration of a law, authority or body or any arbitrator involving the Issuer or any of its affiliates with respect to the Money Laundering Laws is pending or, to the best knowledge of the Issuer, threatened; and

- (xix). **(sanctions)** none of the Issuer or any of its affiliates, nor, to the knowledge of the Issuer, any of its directors, officers, employees, agents or representatives of the Issuer or its affiliates (other than the JLMs), is currently the subject of any designation or specification under or in breach of any sanctions administered or enforced by key sanctions authorities (**Sanctions**), or located, organised or resident in a country or territory that is the subject of Sanctions; and the Issuer will not, directly or indirectly, use the proceeds of the offering of the PERLS XVI, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, to fund or facilitate any activities of any person or entity or in any country or territory that is subject to any Sanctions, or in any other manner that will result in a violation of Sanctions by any person participating in the Offer.
- (c) Each JLM represents and warrants, and undertakes to, the Issuer that, amongst other things:
- (i). it understands and will comply with its obligations under the DDO regime and the TMD in relation to the Offer and PERLS XVI (to the extent applicable);
  - (ii). it holds, or will hold, satisfactory evidence regarding the eligibility of clients for whom it arranges dealings in PERLS XVI in accordance with the TMD;
  - (iii). it has in place policies and procedures and adequate systems and processes (including as to the keeping of records and providing training) for compliance with the DDO regime and the TMD, providing personal advice and evidencing whether a client is a wholesale client or a retail client (in each case, to the extent applicable);
  - (iv). up to and including the Completion Date it will regularly monitor and review its performance and conduct and the performance and conduct of its advisers (if any) engaged in retail product distribution conduct in relation to PERLS XVI for compliance with DDO and the TMD;
  - (v). up to 30 days after the Completion Date, it will notify the Issuer in writing as soon as reasonably practicable if it becomes aware of any significant dealing with respect to PERLS XVI;
  - (vi). up to 30 days after the Completion Date, it will notify the Issuer in writing as soon as reasonable practicable if it receives any significant feedback from a regulator relating to the suitability of PERLS XVI or the requirements applying to distribution of PERLS XVI;
  - (vii). it will take reasonable steps in determining which affiliated brokers receive an allocation of PERLS XVI from that JLM from its JLM Allocation;
  - (viii). up to and including the Issue Date, it will provide reasonable assistance to the Issuer, including by providing information to the Issuer to allow the Issuer to review the TMD for the purposes of section 994C of the Corporations Act and for 12 months after the Offer period, it will provide reasonable assistance to the Issuer to

formulate a future target market determination for a further transaction, and to assist the Issuer to respond to any regulatory queries;

- (ix). it will comply with any reasonable requirements by the Issuer regarding the form or content of the marketing materials used by it for the Offer; and
- (x). it (where it engages in distribution conduct itself) holds all authorisations necessary to engage in distribution conduct,

and that it will obtain similar representations, warranties and undertakings from any affiliated brokers and other external financial intermediaries which may be engaged in dealing with, laying-off or sub-syndicating it allocation of PERLS XVI.

- (d) The representations and warranties in (a) and (b) (other than (b)(x)) are repeated by the Issuer and by each JLM (as applicable) for the benefit of the other parties on the date of the OMA and on the Issue Date of the Offer and in (b)(x) and (c) are repeated by the Issuer and by each JLM (as applicable) for the benefit of the other parties on the date of the OMA and on each day up to and including the Issue Date of the Offer.

## 1.6 Indemnity

- (a) Subject to certain exclusions relating to, amongst other things, fraud, recklessness, wilful misconduct or negligence by an indemnified party, the Issuer agrees to keep the JLMs, their related bodies corporate and affiliates and their respective officers, employees and advisers (**Indemnified Parties**) indemnified from loss in connection with the Offer (including any failure by the Issuer to comply with DDO).
- (b) The indemnity does not waive or release a JLM from its obligations under the OMA, nor permit recovery in respect of any cost of performing such obligations except to the extent attributable to a breach or misrepresentation by the Issuer.

## 1.7 Conditions Precedent

- (a) The obligations of the JLMs under the OMA are subject to the satisfaction of various conditions precedent, including (but not limited to):
  - (i). **(Prospectus)** the Prospectus being lodged with ASIC;
  - (ii). **(ASX instruments)** all ASX instruments required to enable the Issuer to make the Offer being received by the Issuer on or prior to the date on which the Prospectus is lodged with ASIC (**Lodgement Date**);
  - (iii). **(Due diligence report)** delivery to the JLMs on or prior to the Lodgement Date, of the due diligence report and various sign offs, reports and opinions from management of the Issuer and certain advisers;
  - (iv). **(APRA confirmation)** the Issuer providing, prior to lodgement of the Prospectus with ASIC, confirmation to the JLMs that it has received a letter from APRA containing various approvals and confirmations;
  - (v). **(Private tax ruling)** before lodgement of the Prospectus with ASIC, the Australian Tax Officer (**ATO**) has issued to the Issuer a

- private tax ruling confirming the Australian tax treatment of PERLS XVI for the Issuer; and
- (vi). **(TMD)** the Issuer making a TMD publicly available in accordance with section 994B(9) of the Corporations Act and providing a copy of the TMD to the JLMs on or prior to the Lodgement Date.
- (b) The JLMs will have no obligations in relation to settlement support and payment of bookbuild proceeds until certain conditions have been met by the Issuer, including (but not limited to):
- (i). **(Completion certificate)** a duly executed completion certificate is delivered to each JLM by 9:00am on the settlement date for the Offer (**Settlement Date**);
  - (ii). **(Public class ruling)** the Issuer having applied to the ATO for a tax ruling prior to the Lodgement Date to confirm that investors in PERLS XVI will not be denied franking credits in respect of their holdings of PERLS XVI (and the Issuer has not withdrawn the application and the ATO has not refused the ruling on or before the Settlement Date);
  - (iii). **(Exposure Period)** the period referred to in section 727(3) of the Corporations Act has expired (including any extension by ASIC);
  - (iv). **(Margin replacement prospectus)** lodgement by the Issuer of the replacement prospectus with ASIC; and
  - (v). **(ASX quotation)** ASX indicating in writing that it will grant official quotation of the PERLS XVI on ASX, subject only to customary pre-quotation conditions, on or before 9.00am on the Settlement Date.

## 1.8 Termination Rights

Each JLM (whether or not with the consent of the other JLMs) may terminate its obligations under the OMA, by notice to the Issuer and other JLMs at any time before 3.00pm on the Settlement Date, upon becoming aware of the happening of any one or more of the following events:

- (a) **(compliance with regulatory requirements)** a material contravention by the Issuer or any entity in the Group, of the Corporations Act, its constitution, any of the Transaction Documents or any of the ASX Listing Rules; or
- (b) **(Offer documents to comply)** any of the Offer documents do not comply in all material respects with the Corporations Act, the ASX Listing Rules or any other applicable law; or
- (c) **(TMD)** the Issuer withdraws the TMD and a new TMD is not issued or made by or promptly after such withdrawal or a new TMD is issued without prior consultation with the JLMs; or
- (d) **(listing approvals)** approval is refused or not granted, other than subject to customary conditions, to the official quotation of the PERLS XVI on ASX on or before 8:30am on the Issue Date, or if granted, the approval is subsequently withdrawn, qualified or withheld; or
- (e) **(notifications):**
  - (1) ASIC issues an order or interim order under section 739 of the Corporations Act; or



- (2) an application is made by ASIC for an order under sections 1324B or 1325 of the Corporations Act in relation to the Prospectus or ASIC commences any investigation or hearing under Part 3 of the *Australian Securities & Investments Commission Act 2001* (Cth) in relation to the Prospectus; or
- (3) any person (other than a JLM) who has previously consented to the inclusion of its name or any statement in the Prospectus (or any supplementary Prospectus) withdraws that consent; or
- (f) **(withdrawal)** the Issuer withdraws the Prospectus or the Offer; or
- (g) **(market or trading disruptions)** the occurrence of:
  - (1) a suspension or material limitation (persisting for at least one Business Day) in trading in securities generally on ASX, the New York Stock Exchange or the London Stock Exchange;
  - (2) a suspension (persisting for at least one Business Day) in trading in the securities of the Issuer on ASX (other than pursuant to a trading halt); or
  - (3) a general moratorium on banking activities in Australia, the United States or the United Kingdom is declared by the relevant authorities, or there is a material disruption in commercial banking or securities settlement or clearance services in those places; or
- (h) **(other adverse market events)** the occurrence of any other calamity or crisis not presently existing or any change in financial, political or economic conditions or currency exchange rates or controls in Australia, New Zealand, Singapore, Hong Kong or the United States, the United Kingdom or elsewhere, which, in the judgment of the JLMs (acting reasonably), makes it impracticable or inadvisable to proceed with the Offer on the Issue Date on the terms and in the manner contemplated by the Offer documents.

## 1.9 Material Termination Events

Upon becoming aware of the happening of any of the following events, each JLM may terminate their obligations under the OMA by notice to the Issuer and other JLMs at any time before 3.00pm on the Settlement Date, but only if the JLM has reasonable and bona fide grounds to believe that one of the following events has or is likely to have a materially adverse effect on the outcome or settlement of the Offer or performance of the secondary market trading of the PERLS XVI during the 30 day period following quotation on ASX, or otherwise could give rise to a material liability of that JLM in any capacity under any applicable law or administrative action:

- (a) **(ratings downgrade)** either the credit rating assigned to the Issuer at the date of the OMA by Standard & Poor's, Moody's or Fitch is downgraded or withdrawn or that credit rating is placed on credit watch negative; or
- (b) **(adverse change)** any adverse change occurs (or becomes known) after lodgement of the Prospectus in the assets, liabilities, financial position or performance, profits, losses or prospects of the Issuer or the Issuer's group (insofar as the position in relation to an entity in the group affects the overall position of the Issuer), including any adverse change in the assets, liabilities, financial position or performance, profits, losses or prospects of the group from those respectively disclosed in the Offer documents or materials; or

- (c) **(new circumstances)** a new circumstance has arisen since the Prospectus was lodged that would have been required to be included in the Prospectus if it had arisen before the Prospectus was lodged in relation to the Issuer, or any entity in the Issuer's group (other than a routine change to the Issuer's board of directors for renewal purposes); or
- (d) **(new TMD)** the Issuer amends any part of the TMD or makes a new TMD; or
- (e) **(review trigger)** the occurrence of a review trigger specified in the TMD or an event or circumstance that would reasonably suggest the TMD is no longer appropriate; or
- (f) **(hostilities)** hostilities not presently existing at the date of the OMA commence (whether war has been declared or not) or a major escalation in existing hostilities occurs (whether war has been declared or not) in certain key worldwide countries or a major terrorist act is perpetrated on any of those countries or any diplomatic, military, commercial or political establishment of any of those countries elsewhere in the world; or
- (g) **(change in management)** a change in the senior management or board of directors of the Issuer occurs (other than as disclosed in writing prior to the date of the OMA or a routine change to the board of directors for renewal purposes), or a director or senior executive of the Issuer is charged with an indictable offence; or
- (h) **(change of law)** there is introduced, or there is a public announcement of a proposal to introduce a new law or policy (other than one announced prior to the date of the agreement) which does or is likely to prohibit or regulate the Offer, capital issues or stock markets, or there is a Tax Event (as defined in the OMA); or
- (i) **(default)** a default by the Issuer in the performance of any of its obligations under any of the Transaction Documents occurs; or
- (j) **(warranties)** a warranty contained in any of the Transaction Documents on the part of the Issuer is not true or correct; or
- (k) **(completion certificate)** the completion certificate provided by the Issuer is not true or correct; or
- (l) **(due diligence report)** the due diligence report or any other information supplied by or on behalf of the Issuer to a JLM in relation to the Issuer's group or the Offer is misleading or deceptive (including by omission); or
- (m) **(compliance)** any aspect of the Offer does not comply with the Corporations Act, the ASX Listing Rules or any other applicable law; or
- (n) **(disclosure in Prospectus)** a statement contained in the Prospectus is misleading or deceptive, or a matter is omitted from the Prospectus; or
- (o) **(Timetable)** any event set out in the Offer timetable is delayed for more than 5 Business Days (other than a delay caused by the JLMs or as a result of a request by the JLMs) without the prior written consent of the JLMs.

## 1.10 Material Adverse Market Events

If at any time in the period from the date of this agreement to the time two hours before settlement occurs there is a material adverse change in market conditions which, in the reasonable opinion of a majority of the JLMs, makes it inadvisable to proceed with the Offer on the Issue Date on the terms and in the manner contemplated by the Offer documents, the Issuer may be required to enter into good faith discussions with the JLMs

for the purposes of discussing the viability of completing the Offer on the terms and in the manner contemplated by the Offer documents.