



INDEPENDENCE GROUP NL



## INDEPENDENCE GROUP ANNOUNCES RECOMMENDED TAKEOVER OF JABIRU METALS

9 February 2011

### Offer Summary

- Proposed acquisition of 100% of Jabiru Metals by Independence Group at an implied offer price of A\$0.961 per Jabiru Metals share by way of an off-market takeover offer
- Jabiru shareholders to receive 1 Independence share for every 8 Jabiru shares held
- Jabiru Directors unanimously recommend Jabiru's shareholders accept the Offer, and have agreed to accept the Offer with respect to their own shareholdings, in the absence of a Superior Proposal that is not matched by Independence. Following successful completion of the Offer, Jabiru's Managing Director, Mr Gary Comb, will join the Independence board in the position of Executive Director - Operations
- Independence has acquired a 10.48% interest in Jabiru for A\$0.829 cash per share from Jabiru's major shareholder Metals X, who has also agreed to support the transaction and has entered into a pre-bid acceptance agreement in relation to the remainder of its holding in Jabiru (an additional 9.48%)
- Delivers on Independence's strategy of growing a great multi-commodity Australian mining company headquartered in Perth and establishes a strong base to deliver the combined group's suite of growth projects
- Creates a company with two low cost operating mines generating strong cash flows, two high quality growth projects and a highly prospective exploration portfolio and capability

Independence Group NL ("Independence") [ASX: IGO] and Jabiru Metals Limited ("Jabiru") [ASX: JML] are pleased to announce that they have signed a Bid Implementation Agreement ("BIA") for an off-market takeover offer by Independence for all of the issued and outstanding shares in Jabiru ("Offer").

The Offer is unanimously recommended by the Jabiru Board in the absence of a Superior Proposal that is not matched by Independence. Further, Jabiru Directors have agreed to accept the Offer with respect to all shares owned or controlled by them in the absence of a Superior Proposal that is not matched by Independence.

On 9 February 2011, Independence acquired a 10.48% interest in Jabiru for A\$0.829 cash per share from Jabiru's major shareholder Metals X Limited ("Metals X"), who has also agreed to support the transaction and has entered into a pre-bid acceptance agreement in relation to the remainder of its holding in Jabiru (an additional 9.48%). As a consequence of these transactions Independence has a relevant interest in Jabiru of 19.97%.

### Offer Details

Under the Offer, Jabiru shareholders will receive 1 Independence share for every 8 Jabiru shares held. The Offer implies a market capitalisation for Jabiru of approximately A\$532 million and will create a combined group with a pro forma market capitalisation of approximately A\$1.5 billion.<sup>(1)</sup>

Based on the closing share price of Independence shares on 9 February 2011, the implied offer price of A\$0.961 per Jabiru share represents a premium of <sup>(2)</sup>:

- 44.5% premium to the closing price of Jabiru shares on 9 February 2011; and
- 50.2% premium to the 1 month volume weighted average price ("VWAP") of Jabiru shares to 9 February 2011.

Independence also intends to enter into private treaty arrangements with Jabiru option holders to acquire or cancel their options in exchange for Independence shares ("Option Offer").

### **Transaction Highlights**

The Boards of both Independence and Jabiru consider that the combination of the two companies will provide significant strategic and financial benefits to the shareholders of both Independence and Jabiru.

Mr Christopher Bonwick, Managing Director of Independence commented:

*"The acquisition of Jabiru represents a key step in achieving Independence's goal of growing a great multi-commodity Australian mining company and provides an opportunity to bring together a unique and high growth portfolio of production, development and exploration assets."*

Mr Gary Comb, Managing Director of Jabiru stated:

*"The Board of Jabiru considers the transaction to be a compelling opportunity for Jabiru shareholders to capture a premium for their shareholding in Jabiru whilst maintaining an ongoing exposure to an exciting suite of assets held by the combined group. The Board of Jabiru has full confidence in Chris Bonwick and the Independence team to drive the projects forward and create significant value for all shareholders."*

There are a number of compelling benefits for both Jabiru and Independence shareholders, including:

- **Creation of a major Australian metals company** – creates a high growth mid-cap mining house with a unique balance of production, development and exploration assets, including two low-cost producing assets, two long-life development assets, a prospective exploration portfolio and a geological database providing future project generation. Importantly, the combined group will be strong across the key disciplines of operations, project development and exploration.
- **Cash flow across multiple assets and commodities** – the combined group's portfolio of production and development assets provides exposure to a range of metals including nickel, copper, zinc, gold and silver.
- **Complementary businesses** – highly complementary management and technical capabilities, with proven successful track records of exploration, project management and operations. In particular, Independence's unique exploration technology is complemented by Independence's and Jabiru's highly prospective exploration portfolios.
- **Strong balance sheet** – the combined group will have significant balance sheet strength with pro forma net cash position of approximately A\$271 million<sup>(3)</sup>. The combination of a strong balance sheet and strong operating cash flows enhances the financing options for the combined group's development assets. In addition, it will facilitate the acceleration of exploration activities.
- **Increased market capitalisation and liquidity** – the combined group will have a pro forma market capitalisation of approximately A\$1.5 billion, with the potential for inclusion in the ASX100 index over time. This enhanced scale is likely to provide greater liquidity for investors and provide the combined group with greater funding flexibility to pursue a wider range of growth initiatives.
- **Establishes a platform to become a leading mid-cap Australian metals company** – delivers on Independence's strategy of growing a great multi-commodity Australian mining company and establishes a strong base to deliver growth projects and pursue further value-enhancing opportunities with the objective of becoming the leading Australia mid-cap metals company.

Should Independence acquire 80% or more of Jabiru's shares, Jabiru shareholders should benefit from CGT rollover relief in relation to the receipt of Independence shares under the Offer.

### **Exclusivity Arrangements and Pre-Bid Acceptance Agreement**

Pursuant to the BIA, Independence and Jabiru have agreed customary exclusivity arrangements, including "no shop" and "no talk" clauses. The BIA also confers a matching right to Independence, such that Jabiru must provide immediate notification of a competing proposal to Independence, and allow Independence a period of time to counter-offer. A break fee of A\$5 million may also be payable to Independence in certain circumstances. See Annexure A for further details of the BIA.

Independence has acquired a 10.48% interest in Jabiru for A\$0.829 cash per share from Jabiru's major shareholder Metals X, who has also agreed to support the transaction and has entered into a pre-bid acceptance agreement in relation to the remainder of its holding in Jabiru (an additional 9.48%). Under the agreement, Metals X has agreed to accept the Offer in respect of all of their shares, within 5 days of the Offer opening.

### **Offer Conditions**

The Offer is subject to customary conditions, including a 90% minimum acceptance condition, no Material Adverse Change in relation to Jabiru and no prescribed occurrences happening in relation to Jabiru.

See Annexure B for further details in relation to the Offer conditions.

### **Timetable**

The indicative timetable in relation to the Offer is set out below:

- **Wednesday 23 February 2011** – Lodgement of Independence's Bidder's Statement and Jabiru's Target's Statement with ASIC and ASX, and service on Jabiru and Independence respectively
- **Monday 28 February 2011** – Despatch of Bidder's and Target's Statements
- **Monday 28 February 2011** – Independence Offer opens
- **Monday 28 March 2011** – Independence Offer closes (unless extended)

Independence's corporate adviser in relation to the transaction is Credit Suisse (Australia) Limited and its legal adviser is Freehills. Jabiru's financial adviser is Hartleys Limited and its legal adviser is Blake Dawson.

Independence will host an analyst and investor call at 11am Sydney time (8am Perth time) on Thursday 10 February 2011. Dial-in details for the call are as follows:

- Australia (Toll Free): 1800 554 798
- International: +61 2 8113 1400
- Confirmation code: 9280588

### **For further information please contact:**

<b>Mr Christopher Bonwick</b>	<b>Mr Gary Comb</b>
Managing Director, Independence Group NL	Managing Director, Jabiru Metals Ltd
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(1) Based on 138.8m Independence shares on issue as per Appendix 3B dated 19 November 2010, plus the issue of an additional 61.9m Independence shares under the Offer for those Shares in Jabiru not acquired by Independence from Metals X on 9 February 2011. Based on Independence's closing share price on 9 February 2011.

(2) All VWAP's calculated as at 4:15 PM AEDST on 9 February 2011 and excludes all trades on 9 February 2011 after this time (the trade associated with Independence's acquisition of Metal X's 10.48% holding in Jabiru also excluded).

(3) Based on Independence's and Jabiru's reported net cash positions as at 31 December 2010, less cash paid by Independence to Metals X as consideration for the 10.48% interest in Jabiru acquired from Metals X on 9 February 2011.

## Annexure A – Summary of Key Bid Implementation Agreement Terms

### Exclusivity obligations

From the signing of the Bid Implementation Agreement (“BIA”) until the earliest of the end of the Offer Period, the date that is 12 months after the date of the BIA or termination of the BIA (the “Exclusivity Period”), Jabiru is subject to certain exclusivity obligations:

- **No talk:** no negotiations or discussions with any person regarding a Competing Proposal and no provision of any information which may lead to the receipt of a Competing Proposal. The no talk obligation is subject to an exception relating to Competing Proposals which may constitute a superior proposal;
- **No shop:** no acts which have the objective of receiving a Competing Proposal;
- **Notification:** An obligation to immediately notify Independence if Jabiru receives a Competing Proposal or a request for any information that may be in connection with a Competing Proposal and to notify Independence of the identity of the party making the Competing Proposal or request. Jabiru must also provide any material information to Independence that is provided for the purposes of a Competing Proposal; and
- **Matching right:** If Jabiru receives an unsolicited superior proposal from a competing bidder, Jabiru must not enter into any legally binding agreements with the competing bidder and the Jabiru board must not withdraw its recommendation, unless Jabiru has provided Independence with the identity of the other person and the material terms of the superior proposal. Jabiru must also allow Independence 3 business days to amend its bid terms and provide a counterproposal. If the counterproposal would provide a superior outcome then Jabiru and Independence must use their best endeavours to reach an agreement to implement Independence’s counterproposal.

Jabiru’s exclusivity obligations apply in relation to a ‘Competing Proposal’, being a proposal where a third person (and their associates):

- acquires 20% or more of Jabiru’s shares or of any of Jabiru’s related bodies corporate;
- directly or indirectly acquires control of Jabiru;
- acquires all or a substantial part of the business or assets of Jabiru or its related bodies corporate; or
- otherwise acquires or merges with Jabiru.

### Break fee

Jabiru is obliged to pay a break fee to Independence of A\$5 million, if:

- a Competing Proposal is announced or made before the end of the Offer Period and the competing bidder acquires an economic interest of 20% or more in Jabiru, acquires direct or indirect control of Jabiru, acquires all or a substantial part of the business of Jabiru or otherwise acquires or merges with Jabiru;
- Jabiru accepts or enters into an agreement in relation to a Competing Proposal;
- one of Jabiru’s Directors fails to recommend Independence’s Offer to shareholders, revokes such a recommendation or recommends a Competing Proposal;
- Jabiru breaches specified clauses of the BIA including the obligations to promote the takeover bid and not to trigger bid conditions and the exclusivity provisions; or
- a representation or warranty given by Jabiru becomes untrue in a material respect.

No break fee is payable if Jabiru has already terminated the BIA due to a prescribed occurrence in respect of Independence (see below).

## **Termination**

Either Jabiru or Independence may terminate the BIA by written notice:

- where there is a material breach of the BIA to the extent that the breach is not remedied within 10 business days of the breach;
- a representation or warranty given by one of the parties becomes untrue in a material respect;
- a court or Government Agency prohibits Independence's Offer; or
- Independence withdraws its Offer or their Offer lapses for any reason, including not satisfying the bid conditions.

Independence may also terminate the BIA if Jabiru accepts or enters an agreement in relation to a Competing Proposal or the Jabiru board or one of its Directors changes its recommendation or recommends a Competing Proposal (in which cases the break fee becomes payable).

Jabiru may terminate the BIA if certain prescribed occurrences occur in relation to Independence, including insolvency events, the declaration or making of a distribution not in accordance with past practice or there is an event in relation to Independence's nickel production asset that may cause a suspension from production for 30 days or more.

## Annexure B – Conditions of the Offer

The completion of the Offer and any contract that results from an acceptance of the Offer, will be subject to the fulfilment of the conditions set out below:

### (a) Minimum acceptance

At the end of the Offer Period, Independence has relevant interests in at least 90% of the Shares (on a fully diluted basis).

### (b) No regulatory action

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (1) there is not in effect any preliminary or final decision, order or decree issued by any Public Authority;
- (2) no action or investigation is announced, commenced or threatened by any Public Authority; and
- (3) no application is made to any Public Authority (other than by Independence or any associate of Independence),

in consequence of or in connection with the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or materially impact upon, the making of the Offer and the completion of any transaction contemplated by the Bidder's Statement (including, without limitation, full, lawful, timely and effectual implementation of the intentions to be set out in the Bidder's Statement) or which requires the divestiture by Independence of any Shares or any material assets of Jabiru or any subsidiary of Jabiru.

### (c) No material adverse change

- (1) Between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occurs:

- an event, change, condition, matter or thing occurs;
- information is disclosed or announced by Jabiru or any of its subsidiaries concerning any event, change, condition, matter or thing; or
- information concerning any event, change, condition, matter or thing becomes known to Independence (whether or not becoming public),

which will have, could reasonably be expected to have or which evidences that there has been a material adverse effect on the business, assets, liabilities, reputation, financial position and performance, material contracts (taken as a whole), profitability or prospects of Jabiru or any of its subsidiaries, since 30 June 2010, including, without limitation, a creditor's demand made to Jabiru or any subsidiary for more than A\$2,000,000 or acceleration or modification of the obligations of Jabiru or any subsidiary under any material agreement.

- (2) For the purposes of paragraph (c)(1), Independence shall not be taken to know of information concerning any event, change, condition, matter or thing before the Announcement Date, unless Independence knows or ought reasonably to have known (having regard to the information actually known by Independence and the information disclosed by Jabiru in its public filings with the ASX and ASIC before the Announcement Date) of the extent or magnitude of the event, change, condition, matter or thing.
- (3) Paragraph (c)(1) does not apply in relation to particular information, if that information was previously disclosed by Jabiru to Independence before the date of the Bid Implementation Agreement (including as a result of a public filing with the ASX or ASIC) provided that the disclosure was fair (including, without limitation, in relation to the extent and magnitude of the event, change, condition,

matter or thing, as the case may be) and was not, and is not likely to be incorrect, untrue or misleading.

**(d) No prescribed occurrences**

Between the Announcement Date and the date 3 business days after the end of the Offer Period (each inclusive), none of the following prescribed occurrences (being the occurrences listed in section 652C of the Corporations Act) happen:

- (1) Jabiru converting all or any of the Shares into a larger or smaller number of shares under section 254H of the Corporations Act;
- (2) Jabiru or a subsidiary of Jabiru resolving to reduce its share capital in any way;
- (3) Jabiru or a subsidiary of Jabiru entering into a buyback agreement or resolving to approve the terms of a buyback agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (4) Jabiru or a subsidiary of Jabiru making an issue of Shares (other than Shares issued as a result of the exercise of Options into Shares or vesting of Performance Rights) or granting an option over the Shares (including granting any performance rights) or agreeing to make such an issue or grant such an option;
- (5) Jabiru or a subsidiary of Jabiru issuing, or agreeing to issue, convertible notes;
- (6) Jabiru or a subsidiary of Jabiru disposing or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (7) Jabiru or a subsidiary of Jabiru charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- (8) Jabiru or a subsidiary of Jabiru resolving that it be wound up;
- (9) the appointment of a liquidator or provisional liquidator of Jabiru or of a subsidiary of Jabiru;
- (10) the making of an order by a court for the winding up of Jabiru or of a subsidiary of Jabiru;
- (11) an administrator of Jabiru or of a subsidiary of Jabiru being appointed under section 436A, 436B or 436C of the Corporations Act;
- (12) Jabiru or a subsidiary of Jabiru executing a deed of company arrangement;
- (13) the appointment of a receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official in relation to the whole, or a substantial part, of the property of Jabiru or of a subsidiary of Jabiru,

provided that it will not include any occurrence:

- (14) fairly disclosed to Independence before the date of the Bid Implementation Agreement (including as a result of disclosures made to ASX);
- (15) occurring as a result of any matter, event or circumstance required by this document, the Takeover Bid or the transactions contemplated by them; or
- (16) approved in writing by Independence.

**(e) Representations and warranties**

The representations and warranties provided by Jabiru to Independence under the bid implementation agreement in relation to the Offer are true and correct in all material respects, at all times between the Announcement Date and the end of the Offer Period (each inclusive).

**(f) No distributions**

Between the Announcement Date and the end of the Offer Period (each inclusive), Jabiru does not announce, make, declare or pay any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).

**(g) Other regulatory approvals**

Before the end of the Offer Period, all approvals or consents that are required by law, or by any public authority, as are necessary to permit:

- (1) the Offer to be lawfully made to and accepted by Jabiru shareholders; and
- (2) the transactions contemplated by the Bidder's Statement to be completed (including, without limitation, full, lawful and effectual implementation of the intentions to be set out in the Bidder's Statement),

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same.

**(h) No persons entitled to exercise or exercising rights under certain agreements or instruments**

Between the Announcement Date and the end of the Offer Period (each inclusive), there is no person entitled to exercise, exercising or purporting to exercise, stating an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), or asserting a right to exercise, any rights under any provision of any agreement or other instrument to which Jabiru or any Jabiru subsidiary is a party, or by or to which Jabiru or any Jabiru subsidiary or any of its assets or businesses may be bound or be subject, which results, or could result, to an extent to which is material in the context of Jabiru and its subsidiaries taken as a whole, in:

- (1) any moneys borrowed by Jabiru or any Jabiru subsidiary being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument; or
- (2) any such agreement or other such instrument being terminated or modified or any action being taken or arising thereunder;
- (3) the interest of Jabiru or any Jabiru subsidiary in any firm, joint venture, trust corporation or other entity (or any arrangements relating to such interest) being terminated or modified;
- (4) the assets of Jabiru or any Jabiru subsidiary being sold transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions; or
- (5) the business of Jabiru or any Jabiru subsidiary with any other person being adversely affected.

**(i) Acquisitions and disposals**

Between the Announcement Date and the end of the Offer Period (each inclusive), neither Jabiru nor any of its subsidiaries, acquires or disposes of, or enters into or announces any agreement for the acquisition or disposal of, any asset or business, or enters into any corporate transaction, which would or would be likely to involve a material change in:

- (1) the manner in which Jabiru conducts its business;
- (2) the nature (including balance sheet classification), extent or value of the assets of Jabiru; or
- (3) the nature (including balance sheet classification), extent or value of the liabilities of Jabiru,

including, without limitation, any transaction which would or (subject to one or more conditions) may involve:

- (4) Jabiru or any subsidiary of Jabiru entering any joint venture agreement or like arrangement in respect of tenements held by Jabiru or any subsidiary of Jabiru, or any offtake agreement or like agreement in respect of product from such tenements;



- (5) Jabiru or any subsidiary of Jabiru acquiring, or agreeing to acquire, one or more companies, businesses or assets for an amount in aggregate greater than A\$2 million; or
- (6) Jabiru or any subsidiary of Jabiru disposing, or agreeing to dispose of, one or more companies, businesses or assets (or any interest therein) for an amount in aggregate greater than A\$2 million.

**(j) Capital expenditures**

Between the Announcement Date and the end of the Offer Period (each inclusive), Jabiru does not incur or commit to incur an amount of capital expenditure in excess of A\$2 million other than:

- (1) capital expenditure that has been announced by Jabiru before the Announcement Date as intended to be incurred or committed; or
- (2) capital expenditure in the day to day operating activities of the business of Jabiru and its subsidiaries conducted in the same manner as before the Announcement Date.

**(k) No break fees**

Between the Announcement Date and the end of the Offer Period, Jabiru does not agree (whether conditionally or unconditionally) to make any payment by way of break fee, inducement fee, cost reimbursement or otherwise, to any person other than Independence or an associate, or forgo any amount to which it would otherwise be entitled, in connection with a proposal by that person for:

- (1) a takeover bid for, or scheme of arrangement proposed by Jabiru, under the Corporations Act;
- (2) the acquisition by that person or an associate of substantially all the assets and operations of Jabiru; or
- (3) any transaction having a similar economic effect.

This section does not apply to a payment by way of remuneration for professional services or to directors of Jabiru for the discharge of their duties in connection with the Offer.

**(l) Minimum bid price rule**

Independence is able to proceed with the Offer on the basis of the consideration of 1 Independence share for every 8 Jabiru shares (and not a higher number of Independence shares) without breaching section 621(3) of the Corporations Act (as amended by ASIC or any other regulator through specific relief or otherwise).