

**SWICK MINING SERVICES**

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22 October 2021

ASX ANNOUNCEMENT

## Swick Mining Services and DDH1 Limited Enter into Scheme Implementation Agreement

### Highlights:

- Swick and DDH1 have now entered into a Scheme Implementation Agreement reflecting the indicative terms announced on 12 October
- Consideration for Swick shares will be 100% DDH1 shares at a ratio of 0.2970 DDH1 shares for each Swick share, equating to \$0.35 per Swick share<sup>1</sup> - values Swick at an Enterprise Value of \$115 million
- Swick shareholders will also receive Orexlore shares under the proposed Orexlore demerger
- Subject to the approval of the Orexlore demerger by Swick shareholders at a shareholder meeting expected to be held in December 2021, Orexlore is expected to be listed on the ASX in early 2022
- It is anticipated that Swick shareholders will meet in January 2022 to vote on the Scheme
- The Swick Board unanimously recommends the Scheme to shareholders, in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of shareholders

**Western Australia – Swick Mining Services Limited ('Swick', ASX: SWK)**, a leading provider of high-quality underground mineral drilling and mineral analysis services, and underground mobile drilling equipment, announces that it has entered into a binding Scheme Implementation Agreement (**SIA**) with DDH1 Limited (**DDH1**) under which it is proposed that DDH1 will acquire 100% of the shares in Swick by way of a Scheme of Arrangement between Swick and its shareholders (**Scheme**).

As announced on 12 October, the proposed Scheme does not impact Swick's announced plan to demerge Orexlore (**Orexlore demerger**), with Swick shareholders to also receive Orexlore shares in addition to DDH1 shares (assuming completion of the demerger and receipt of all necessary approvals). Subject to the approval of the Orexlore demerger by Swick

<sup>1</sup> Based on the 5-day volume weighted average price for DDH1 shares of \$1.1793 over the 5 trading days up and including 6 October 2021

shareholders at a shareholder meeting expected to be held in December 2021, Orexlore is expected to be listed on the ASX in early 2022.

Under the terms of the Scheme, Swick shareholders will receive 0.2970 DDH1 shares for each Swick share held (**DDH1 Consideration**). Based on the 5-day volume weighted average price for DDH1 shares of \$1.1793<sup>2</sup>, the offer values Swick shares at \$0.35 per share, and is after allowing for the additional \$12m investment in Orexlore committed by Swick as part of the demerger. An offer value of \$0.35 per share represents:

- a 32% premium to Swick's closing price of \$0.265 on 6 October 2021, being the last trading day prior to DDH1 and Swick agreeing valuation terms;
- a 28% premium to Swick's 5-day VWAP of \$0.274, being the five trading days up and including 6 October; and
- a share price high since 2013.

Note, the premia noted above are compared to Swick's trading price as a whole and do not apportion the trading price between the Drilling Business and Orexlore. In addition to the value of \$0.35 per share under the Scheme, Swick shareholders will also receive Orexlore shares under the proposed Orexlore demerger. Upon listing, Orexlore will also have \$12 million cash on its balance sheet. Swick confirms that it is proceeding with the Orexlore demerger, under which Orexlore shares are expected to be listed on the ASX in early 2022.

The Scheme values Swick's Drilling Business at an enterprise value of \$115 million.

#### Swick Board Recommendation

Each Director of the Swick Board considers the Scheme to be in the best interest of Swick shareholders and recommends that Swick shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Swick shareholders.

Subject to those same qualifications, each Swick Director intends to vote, or procure the voting of, any Swick shares in which he has a relevant interest, representing approximately 12.3% of Swick's issued shares, to vote in favour of the Scheme.

In agreeing to recommend the Scheme, the Swick Directors have considered:

1. the takeover premium being offered to Swick shareholders relative to the current and historic Swick share trading levels;
2. the fact that Swick shareholders will continue to have exposure to the enlarged entity (including Swick) and so can participate in synergy realisation and any future upside;
3. the potential benefits from being part of a larger ASX listed drilling company including diversity, scale, and possible capital markets benefits;
4. that the value of Orexlore will be retained by Swick shareholders via the Orexlore demerger; and
5. the offer value represents a share price high since 2013.

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<sup>2</sup> Based on DDH1's volume weighted average price over the 5 trading days up and including 6 October 2021

## Details of the Scheme Implementation Agreement

The implementation of the Scheme remains subject to certain conditions set out in clause 3.1 of the SIA, including, among other things:

- securing regulatory approvals for the Scheme, approval by Swick shareholders and the Court;
- Foreign Investment Review Board approval;
- that an independent expert concludes that the Scheme is in the best interests of Swick shareholders, and does not change that conclusion;
- agreeing the final Demerger Agreement (between Oreplore and Swick) and no liability arising under the Demerger Agreement in excess of the maximum recovery amount under the Demerger Agreement;
- approval by Swick shareholders of the Oreplore demerger ;
- no material adverse change or prescribed occurrences occurring in relation to either Swick or DDH1;
- no material breach of warranties; and
- other conditions customary for a transaction of this nature.

The Scheme is not subject to a due diligence condition.

Under the SIA, Swick is bound by customary exclusivity provisions including “no shop”, “no talk”, “no due diligence”, “notification” and “matching right” provisions for the benefit of DDH1, subject to customary fiduciary carve-outs for the benefit of Swick’s directors. Swick and DDH1 have also agreed to a break fee of \$994,000 payable to DDH1 in certain circumstances. A reverse break fee of \$994,000 is also payable to Swick in certain circumstances.

Full details of the terms and conditions of the Scheme are set out in the Scheme Implementation Agreement, a copy of which is annexed to this announcement.

Subject to ASIC registration and Court approval, the Scheme Booklet is expected to be dispatched to Swick shareholders in November 2021. The Scheme Booklet will contain more information regarding the transaction, detailed reasons for the Board’s recommendation, an Independent Expert’s Report and notice of the Scheme Meeting, and other customary information.

It is anticipated that Swick shareholders will meet in January 2022 to vote on the Scheme.

Swick shareholders do not need to take any action at this time.

An indicative timetable for the Scheme is set out below:

Event	Expected Date
Send Scheme Booklet to ASIC	Mid- late November 2021
First Court Date	Early-mid December 2021
Scheme Meeting	Mid-late January 2022
Second Court Date	Mid-late January 2022
Effective Date	Late January 2022
Record Date	Late January 2022
Implementation Date	Late January 2022

#### Advisors

Swick's financial advisor is Shaw and Partners and its legal advisor is HWL Ebsworth

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This ASX announcement was authorised for release by the Board of Swick Mining.

#### About Swick Mining Services:

Swick Mining Services Ltd (ASX: SWK) is one of Australia's largest mineral drilling contractors, providing high quality underground mineral drilling and mineral analysis services, and underground mobile drilling equipment to a diverse group of mining houses and across a spread of commodities. The Company has a strong reputation for innovation in rig design and drilling practices that delivers improvements in productivity, safety, versatility and value. Swick has a global presence with Operational revenue from Australia, United States and Europe.

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**Disclosure Statement:**

These materials include forward looking statements. Forward looking statements inherently involve subjective judgement and analysis and are subject to significant uncertainties, risks and contingencies, many of which are outside of the control of, and may be unknown to, the Company. Actual results and developments may vary materially from those expressed in these materials. The types of uncertainties which are relevant to the Company may include, but are not limited to, commodity prices, political uncertainty, changes to the regulatory framework which applies to the business of the Company and general economic conditions. Given these uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements. Forward looking statements in these materials speak only at the date of issue. Subject to any continuing obligations under applicable law or any relevant stock exchange listing rules, the Company does not in providing this information undertake any obligation to publicly update or revise any of the forward-looking statements or any change in events, conditions or circumstances on which any such statement is based.

## **Annexure - Scheme Implementation Agreement**

For personal use only

# Scheme implementation agreement

DDH1 Limited

Bidder

DDH1 FinCo Pty Ltd

Bidder Nominee

Swick Mining Services Ltd

Target

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# Scheme implementation agreement

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## Date

21 October 2021

## Parties

**Swick Mining Services Ltd ACN 112 917 905** of 64 Great Eastern Highway, South Guildford WA 6055 (**Target**)

**DDH1 Limited ACN 636 677 088** of 21 Baile Road, Canning Vale WA 6155 (**Bidder**)

**DDH1 FinCo Pty Ltd ACN 625 961 980** of 21 Baile Road, Canning Vale WA 6155 (**Bidder Nominee**)

## Background

- A. The Bidder, through its wholly owned subsidiary, the Bidder Nominee, proposes that it will acquire all of the Scheme Shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders.
- B. The Target has agreed to propose the Scheme and issue the Scheme Booklet at the request of the Bidder, and the Target, the Bidder and Bidder Nominee have agreed to implement the Scheme on the terms and conditions of this agreement.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this agreement:

**Advisor** means, in relation to an entity, its legal, financial and other expert advisors (not including the Independent Expert).

**Agreed Form** means a document that has been agreed in writing by the Target and the Bidder on or before the date of this agreement and has been initialled by or on behalf of the Target and the Bidder or acknowledged via email, in each case for the purposes of identification.

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

**Associate** has the meaning given in section 12 of the Corporations Act.

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

**Beneficiary** means a present or former director or officer of the Target Group in respect of whom the Policy applies.

**Bidder Announcement** means the announcement of the Scheme by the Bidder in the Agreed Form.

**Bidder Counter Proposal** has the meaning given in clause 9.7(a)(v).

**Bidder Due Diligence Materials** means:

- (a) all information and documents provided to the Target by or on behalf of the Bidder prior to the date of this agreement; and
- (b) the questions raised by the Target during the due diligence process and the responses given to those questions given by or on behalf of the Bidder prior to the date of this agreement.

**Bidder Executive Team** means Sy Van Dyk, Murray Pollock, Ben MacKinnon and Simon Franich.

**Bidder Group** means the Bidder, the Bidder Nominee and each of their Related Bodies Corporate.

**Bidder Indemnified Parties** means the Bidder, the Bidder Nominee and its Related Bodies Corporate and their respective directors, officers and employees.

**Bidder Information** means:

- (a) all information regarding the Bidder, the Bidder Nominee or the Bidder Group as is required to be included in the Scheme Booklet by:
  - (i) the Corporations Act and the Corporations Regulations;
  - (ii) ASIC policy (including the Regulatory Guides); and
  - (iii) all other applicable laws; and
- (b) any other information that the Target and the Bidder agree is Bidder Information,

but excluding the Independent Expert's Report, any Investigating Accountant's Report and any statement on the letterhead of the Target's tax adviser of the Tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet. For the avoidance of doubt, the Bidder Information includes all information that would be required under section 636 of the Corporations Act to be included in a bidder's statement if the Bidder was offering the Scheme Consideration as consideration under a takeover bid.

**Bidder Long Term Incentive Plan** means the "Long Term Incentive Plan - DDH1 Limited" operated by the Bidder.

**Bidder Material Adverse Change** means any event, matter, change or circumstance occurring, discovered or announced between the date of this agreement and the Delivery Time (including any action taken by a Regulatory Authority) which, whether individually or when aggregated with all such events, matters, changes, or circumstances or things of a like kind has had or will have (after taking into account any matter which offsets the impact of the event, change or circumstance and in each case other than those events, changes or circumstances):

- (a) the effect of diminishing:
  - (i) the consolidated net assets of the Bidder Group by at least 10% compared to the consolidated net assets of the Bidder Group as at 30 June 2021; or
  - (ii) the consolidated annual EBITDA of the Bidder Group by at least 10% compared to the consolidated annual EBITDA of the Bidder Group for the year ended 30 June 2021,

other than those events, changes or circumstances:

- (b) contemplated or required to be done by the Bidder under the Transaction Documents (or reasonably necessary to the foregoing);
- (c) where the Bidder has first consulted in writing with the Target in relation to the matter and the Target has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;
- (d) done or not done at the written request of the Target, including any consequences arising as a result of such matters;
- (e) that have been Disclosed by the Bidder prior to the date of this agreement;
- (f) arising as a result of any generally applicable change in law (including subordinate legislation) or government policy; or
- (g) relating to any material adverse change or disruption to economic or business conditions that impact the Bidder and its competitors in a similar manner.

**Bidder Payment** means the amount of \$994,000 (representing the amounts referred to in clause 10.1(d) in respect of the Target).

**Bidder Performance Rights** means performance rights in respect of Bidder Shares issued pursuant to the Bidder Long Term Incentive Plan.

**Bidder Prescribed Occurrence** means the occurrence of any of the following events:

- (a) the Bidder converting all or any of its securities into a larger or smaller number of securities;
- (b) the Bidder resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) the Bidder or any Bidder Group member:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) the Bidder issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right;
- (e) the Bidder issuing, or agreeing to issue, convertible notes or any other security convertible into shares;
- (f) the Bidder agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members;
- (g) the Bidder or any other member of the Bidder Group disposing, or agreeing to dispose of, the whole, or a substantial part of the business or property of the Bidder Group (taken as a whole);
- (h) the Bidder or any other member of the Bidder Group creating, or agreeing to create, any Encumbrance over any of its business or property other than in the ordinary course of business; or

- (i) an Insolvency Event occurring in relation to the Bidder, other than an event:
- (j) required by law or a Regulatory Authority;
- (k) contemplated or required to be done by the Bidder under the Transaction Documents (or reasonably necessary to the foregoing);
- (l) where the Bidder has first consulted in writing with the Target in relation to the matter and the Target has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted; or
- (m) that has been Disclosed by the Bidder prior to the date of this agreement.

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

**Bidder Warranties** means the representations and warranties made by the Bidder and Bidder Nominee set out in Schedule 1.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

**Cash Out Shareholder** means a Scheme Shareholder (not being an Ineligible Overseas Shareholder) who, based on their holding of Scheme Shares on the date of the Scheme Booklet would, on implementation of the Scheme, be entitled to receive less than a Marketable Parcel of New Bidder Shares (assessed by reference to the last traded price of Bidder Shares on ASX on the trading day prior to the date of the Scheme Booklet) as Scheme Consideration.

**Change of Control Contract** means each contract in the Agreed Form "List of Change of Control Contracts".

**Competing Proposal** means, other than the Orexplore Demerger, a proposed transaction or arrangement, which, if implemented substantially in accordance with its terms, would result in a Third Party (either directly or indirectly):

- (a) acquiring or having a right to acquire, or obtaining an economic interest in, all or a substantial part of the business, assets or undertakings of the Target Group;
- (b) acquiring Control of the Target; or
- (c) acquiring a Relevant Interest in any Target Shares, as a result of which the Third Party, together with any Associates, would have a Relevant Interest in more than 20% of Target Shares in aggregate.

**Condition** means each condition specified in clause 3.1.

**Confidentiality Deed** means the confidentiality deed dated 5 July 2021 between the Target and the Bidder.

**Control** has the meaning given in the Corporations Act.

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

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

**Court** means the Supreme Court of Western Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**Decision Time** means 6:00 pm on the Business Day before the Second Court Date.

**Deed Poll** means a deed poll to be executed by the Bidder and Bidder Nominee in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as the Target, the Bidder and Bidder Nominee agree in writing.

**Delivery Time** means 8:00 am on the Second Court Date.

**Demerger Agreement** means the implementation agreement between the Target and Orexlore Technologies Limited on the terms approved in writing by the Bidder, acting reasonably, relating to the implementation of the Orexlore Demerger.

**Disclosed** means fairly disclosed

- (a) in respect of the Target:
  - (i) by the Target to the Bidder prior to the date of this agreement in the Target Due Diligence Materials or the Target Disclosure Letter; or
  - (ii) in documents that were publicly available prior to the date of this agreement, including from any announcement made by the Target on ASX or public filings of the Target with ASIC; and
- (b) in respect of the Bidder:
  - (i) by the Bidder to the Target prior to the date of this agreement in the Bidder Due Diligence Materials; or
  - (ii) in documents that were publicly available prior to the date of this agreement, including from any announcement made by the Bidder on ASX or public filings of the Bidder with ASIC.

**EBITDA** means earnings before interest, taxes, depreciation and amortisation, in accordance with the accounting policies and practices applied by the Target as at the date of this agreement and excluding all costs and expenses incurred by the Target in connection with, or in any way associated with the Scheme process and the Scheme (such costs and expenses includes all related fees payable to external advisers or service providers of the Target).

**Effective** means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

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

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means the date that is 6 months after the date of this agreement or such other date agreed in writing between the Target and the Bidder.

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the earliest of:

- (a) the End Date;
- (b) the date this agreement is terminated in accordance with its terms; and
- (c) the Implementation Date.

**FIRB** means Foreign Investment Review Board.

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

**Foreign Acquisitions and Takeovers Act** means the Foreign Acquisitions and Takeovers Act 1975 (Cth).

**Implementation Date** means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

**Impugned Amount** has the meaning given in clause 10.5.

**Ineligible Overseas Shareholder** means a Scheme Shareholder whose address shown in the Target Share Register on the Record Date is a place outside Australia and its external territories and New Zealand, unless the Target determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Bidder Shares when the Scheme becomes Effective.

**Investigating Accountant** means the accountant that may be engaged by the Target in its discretion to prepare an Investigating Accountant's Report.

**Investigating Accountant's Report** means a report in respect of the historical financial information of the Target, the historical financial information of the Bidder and the pro forma historical financial information of the combined Target Group and Bidder Group which may be prepared for inclusion in the Scheme Booklet.

**Independent Expert** means the independent expert to be engaged by the Target to express an opinion on whether the Scheme is in the best interests of Target Shareholders.

**Independent Expert's Report** means the report (including the initial report and any update, revision, amendment, addendum or supplementary report) from the Independent Expert in respect of whether the Scheme is in the best interests of Target Shareholders.

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

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed;
- (e) the entity being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act;
- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property, business or assets of the entity; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that entity under the laws of any jurisdiction.

**Intellectual Property Rights** means:



- (a) patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know-how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world.

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

**Marketable Parcel** means a parcel of shares that are worth not less than \$500 accordance with the ASX Operating Rules Procedures.

**Material Adverse Change** means any event, matter, change or circumstance occurring, discovered or announced between the date of this agreement and the Delivery Time (including any action taken by a Regulatory Authority) which, whether individually or when aggregated with all such events, matters, changes, or circumstances or things of a like kind has had or will have (after taking into account any matter which offsets the impact of the event, change or circumstance and in each case other than those events, changes or circumstances):

- (a) the effect of diminishing:
  - (i) the consolidated net assets of the Target Group by at least 10% compared to the consolidated net assets of the Target Group as at 30 June 2021; or
  - (ii) the consolidated annual EBITDA of the Target Group by at least 10% compared to the consolidated annual EBITDA of the Target Group for the year ended 30 June 2021,

other than those events, changes or circumstances:

- (b) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
- (c) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;
- (d) done or not done at the written request of the Bidder, including any consequences arising as a result of such matters;
- (e) that have been Disclosed by the Target prior to the date of this agreement;
- (f) arising as a result of any generally applicable change in law (including subordinate legislation) or government policy; or
- (g) relating to any material adverse change or disruption to economic or business conditions that impact the Target and its competitors in a similar manner.

**Material Contracts** means each contract in the Agreed Form "List of Material Contracts".

**New Bidder Shares** means fully paid ordinary shares in the Bidder to be provided to Scheme Shareholders under the Scheme.

**Orexpl ore** means the Mineral Technology Business that will be demerged from the Target Group pursuant to the Demerger Agreement.

**Orexpl ore Arrangements** means any arrangements to be entered into between a member of the demerged group under the Orexplore Demerger and a member of the Target Group.

**Orexpl ore Demerger** means the proposed demerger of Orexplore to be implemented pursuant to the Demerger Agreement.

**Policy** means the Target Group directors' and officers' insurance policy in effect at the date of this agreement.

**Prescribed Occurrence** means the occurrence of any of the following events:

- (a) the Target converting all or any of its securities into a larger or smaller number of securities;
  - (b) the Target resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares, other than as required for the Orexplore Demerger;
  - (c) the Target or any Target Group member:
    - (i) entering into a buy-back agreement; or
    - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
  - (d) the Target issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than the issue of Target Performance Rights which have been granted before the date of this agreement, or as required for the Orexplore Demerger, or the issue of Target Shares upon exercise or vesting of any Target Performance Rights or Target Warrants);
  - (e) the Target issuing, or agreeing to issue, convertible notes or any other security convertible into shares;
  - (f) the Target agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members other than the payment of the Target Final Dividend;
  - (g) the Target or any other member of the Target Group disposing, or agreeing to dispose of, the whole, or a substantial part of the business or property of the Target Group (taken as a whole), other than as required for the Orexplore Demerger;
  - (h) the Target or any other member of the Target Group creating, or agreeing to create, any Encumbrance over any of its business or property other than in the ordinary course of business; or
  - (i) an Insolvency Event occurring in relation to the Target,
- other than an event:
- (j) required by law or a Regulatory Authority;
  - (k) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);

- (l) undertaken in connection with the Orexlore Demerger and Disclosed in the Target Due Diligence Materials or otherwise agreed to in writing by the Bidder, and for the avoidance of doubt includes a member of the Target Group making the Seed Funding Payment and the cancellation of the Target Warrants;
- (m) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted; or
- (n) that has been Disclosed by the Target prior to the date of this agreement.

**Recommendation** has the meaning in 7.1(a)(i).

**Record Date** means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

**Regulator's Draft** has the meaning in clause 4.1(e).

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Regulatory Guides** means all regulatory guides published by ASIC and in force at the date of this agreement.

**Regulatory Review Period** means the period from the date on which the Target provides the Regulator's Draft to ASIC in accordance with clause 4.1(e) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Relevant Employee** means any executive or member of management of the Target Group whose annual base salary exceeds \$300,000 per annum.

**Relevant Interest** has the meaning given in the Corporations Act.

**Representatives** means, in relation to a party, the directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

**Run Off Cover** has the meaning given in clause 11.2.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as the Target and the Bidder agree in writing.

**Scheme Booklet** means the Scheme Booklet to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be despatched to Target Shareholders.

**Scheme Consideration** means the consideration which a Scheme Shareholder is entitled to receive under the Scheme, as described in clause 5.2 for each Scheme Share ascertained and subject to adjustment in accordance clauses 5.

**Scheme Implementation Committee** means the committee established by the parties in accordance with clause 6.3.

**Scheme Meeting** means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme.

**Scheme Share** means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder or the Bidder Nominee as at the Record Date.

**Scheme Shareholder** means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

**Second Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Seed Funding Payment** means the payment to Orexlore of up to \$12,000,000.

**Subsidiary** has the meaning given to that term in the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal which the Target Board, acting in good faith and after receiving advice from external legal advisers, considers to be:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters; and
- (b) is, in the Target Directors' reasonable opinion having regard to any external financial advice, of a higher financial value to Target Shareholders and would, if it is completed, result in a transaction that is more favourable to Target Shareholders than the Scheme,

in each case taking into account all aspects of the Competing Proposal, including:

- (c) the financial value and form of the consideration payable to Target Shareholders under the Competing Proposal;
- (d) the terms and conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal (as compared to the nature and status of outstanding Conditions and whether those Conditions are likely to be satisfied or waived, and the level of certainty in respect of the funding required for the Scheme);
- (e) the level of certainty and the likely timing required to implement or complete the Competing Proposal (as compared to the Scheme); and
- (f) any other matters relevant to the Competing Proposal being contemplated.

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

**Target Announcement** means the announcement of the Scheme by the Target in the Agreed Form.

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

**Target Disclosure Letter** means the letter (if any) executed by the Target and given to the Bidder by the date of this agreement.

**Target Due Diligence Materials** means:

- (a) all information and documents provided to the Bidder by or on behalf of the Target in the online data room established by the Target prior to the date of this agreement; and
- (b) the questions raised by the Bidder during the due diligence process and the responses given to those questions given by or on behalf of the Target prior to the date of this agreement (as included in the online data room established by the Target).

**Target Executive Team** means Kent Swick, Jitu Bhudia, Nick Rossides and Paul Robinson.

**Target Final Dividend** means a fully franked dividend not exceeding \$0.01 per Target Share declared and paid by the Target in the ordinary course in respect of the six month period ending 30 June 2021.

**Target Group** means the Target and each of its Related Bodies Corporate.

**Target Indemnified Parties** means the Target and its Related Bodies Corporate and their respective directors, officers and employees.

**Target Information** means all information included in the Scheme Booklet, other than the Bidder Information, the Independent Expert's Report, any Investigating Accountant's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet.

**Target IP** means all Intellectual Property Rights owned by the Target Group.

**Target Payment** means the amount of \$994,000 (representing the amounts referred to in clause 10.1(d) in respect of the Bidder).

**Target Performance Rights** means any performance rights in respect of Target Shares granted or issued pursuant to the "Swick Mining Services Limited Performance Rights Plan".

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Shareholder** each person registered in the Target Share Register as the holder of one or more Target Shares.

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

**Target Warranties** means the representations and warranties made by the Target set out in Schedule 2.

**Target Warrants** means any warrants in respect of Target Shares issued by the Target.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method

collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

**Taxation Condition** means a condition imposed by the Treasurer under section 74(2) of the Foreign Acquisitions and Takeovers Act in the form of the conditions in the "Taxation conditions of certain no objection decisions" in Attachment A to the Foreign Investment Review Board Guidance Note 47 (or any other replacement or substitute taxation conditions that may be issued by the Treasurer from time to time).

**Third Party** means a person other than the Bidder, the Bidder Nominee, the Target, the Bidder Group or the Target Group.

**Timetable** means the indicative timetable in relation to the Scheme set out in Schedule 3, or such other indicative timetable as the Target and the Bidder agree in writing.

**Transaction** means the acquisition by the Bidder, through the Bidder Nominee, of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

**Transaction Documents** means:

- (a) this agreement;
- (b) the Scheme; and
- (c) the Deed Poll.

**Transaction Process Deed** means the transaction process deed dated on or around 5 July 2021 between the Target and the Bidder.

**Treasurer** means the Treasurer of the Commonwealth of Australia.

**Voting Intention** has the meaning in clause 7.1(a)(ii).

## 1.2 Best and reasonable endeavours

Any provision of this agreement which requires a party to use best endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing; or
- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or all reasonable endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

## 1.3 Business Day

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this agreement expressly specifies otherwise.



## 1.4 Interpretation

In this agreement headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to 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 any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to 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, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to an event, matter or circumstance being **fairly disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person experienced in transactions similar to the Transaction and experienced in business similar to any business conducted by the Target Group (if disclosed by the Target) or the Bidder Group (if disclosed by the Bidder or Bidder Nominee) to identify the nature, substance and scope of the relevant event (and includes events, matters or circumstances which ought reasonably to be expected to arise from an event, matter or circumstance so disclosed);
- (k) a reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:
  - (i) in respect of the Bidder or Bidder Nominee, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that

member of the Bidder Executive Team was employed by the Bidder at the relevant time; and

- (ii) in respect of the Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by the Target at the relevant time;
- (l) a reference to \$ or dollar is to Australian currency;
- (m) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (n) a reference to a date or time is to that date or time in Perth, Australia; and
- (o) this agreement (including any term or condition of it) must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

## 2. Obligations in relation to Scheme

### 2.1 The Target to propose Scheme

- (a) The Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement.
- (b) The Bidder and the Bidder Nominee agree to assist the Target to propose the Scheme on and subject to the terms and conditions of this agreement.

### 2.2 The Target and the Bidder to implement Scheme

The Target, the Bidder and the Bidder Nominee agree to implement the Scheme on and subject to the terms and conditions of this agreement.

## 3. Conditions precedent

### 3.1 Conditions

Subject to this clause 3.1, the Scheme will not become Effective and the obligations of the Target, the Bidder and the Bidder Nominee to complete the implementation of the Scheme are not binding until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit and waive	Responsibility to satisfy
(a) <b>(Scheme shareholder approval)</b> Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	The Target



Condition	Right to benefit and waive	Responsibility to satisfy
(b) <b>(Court approval of Scheme)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	The Target
(c) <b>(FIRB approval)</b> before the Scheme Meeting, the Treasurer has either: <ul style="list-style-type: none"> <li>(i) provided written notice that there is no objection under the Foreign Acquisitions and Takeovers Act to the proposed acquisition by the Bidder and the Bidder Nominee under the Transaction, with the notice of no objection being either unconditional or subject only to:               <ul style="list-style-type: none"> <li>A. the Taxation Conditions; and/or</li> <li>B. other conditions which are reasonably acceptable to the Bidder; or</li> </ul> </li> <li>(ii) become precluded from exercising any power to make an order under the Foreign Acquisitions and Takeovers Act in relation to the Scheme;</li> </ul>	None	The Bidder
(d) <b>(Orexplora Demerger approval)</b> Target Shareholders approve the Orexplore Demerger in accordance with sections 256B and 256C of the Corporations Act and Listing Rule 11.4.1(b);	The Bidder	The Target
(e) <b>(Demerger Agreement)</b> the Demerger Agreement is executed by the Target and Orexplore Technologies Limited on terms approved in writing by the Bidder, acting reasonably;	The Bidder	The Target
(f) <b>(Liability under the Demerger Agreement)</b> no liability arises and becomes payable by the Target (or any member of the Target Group) under the Demerger Agreement which is in excess of (including any Taxes, duties and tax costs, grossed up for any Taxes payable by the Target on any such payment) the maximum recovery amount under the Demerger Agreement;	The Bidder	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
<p>(g) <b>(Regulatory approvals)</b> on or before the Delivery Time, all consents, waivers and approvals from a Regulatory Authority which the Target and the Bidder (acting reasonably) agree in writing are necessary to implement the Scheme are granted or obtained and none of those consents, waivers and approvals have been withdrawn, cancelled or revoked.</p> <p>For the avoidance of doubt, this includes, but is not limited to, ASIC and ASX having issued or provided such consents or approvals or having done such other acts which the Target and the Bidder agree (acting reasonably) are necessary to implement the Scheme, or the Bidder having done such other acts which the Target and the Bidder (acting reasonably) agree are necessary to implement the Scheme.</p> <p>If such consents, approvals or other acts are subject to conditions, those conditions must be acceptable to the Target and the Bidder (acting reasonably);</p>	The Target and the Bidder	In respect of each agreed consent, waiver or approval, the party who has the legal obligation to obtain it
<p>(h) <b>(No restraint)</b> no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing any of the transactions contemplated by this agreement is in effect at the Delivery Time;</p>	The Target and the Bidder	The Target and the Bidder
<p>(i) <b>(Independent Expert's Report)</b> the Independent Expert's Report concludes that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw that conclusion prior to the Delivery Time;</p>	The Target	The Target
<p>(j) <b>(Change of Control Contracts)</b> on or before the Delivery Time, the Target has received a copy of each consent or waiver required under the Change of Control Contracts to the change of control of the Target resulting from the Transaction, and such consents or waivers</p>	The Bidder	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
have not been withdrawn, suspended or revoked;		
(k) <b>(No Material Adverse Change)</b> no Material Adverse Change occurs before the Delivery Time;	The Bidder	The Target
(l) <b>(No Prescribed Occurrence)</b> no Prescribed Occurrence occurs, and the Target is not in material breach of clause 6.1, before the Delivery Time;	The Bidder	The Target
(m) <b>(Target Warranties)</b> the Target Warranties are true and correct in all material respects as at the time they are given or made; and	The Bidder	The Target
(n) <b>(Bidder Warranties)</b> the Bidder Warranties are true and correct in all material respects as at the time they are given or made;	The Target	The Bidder
(o) <b>(No Bidder Material Adverse Change)</b> no Bidder Material Adverse Change occurs before the Delivery Time;	The Target	The Bidder
(p) <b>(No Bidder Prescribed Occurrence)</b> no Bidder Prescribed Occurrence occurs before the Delivery Time;	The Target	The Bidder
(q) <b>(Quotation of New Bidder Shares)</b> the New Bidder Shares to be issued to Scheme Shareholders pursuant to the Scheme have been approved for official quotation by ASX (any such approval may be subject to customary conditions and to the Scheme becoming Effective) before the Delivery Time;	The Target	The Bidder

### 3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the Target, the Bidder and the Bidder Nominee under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition (or specified in respect of a particular regulatory approval in the case of the Condition in clause 3.1(g)), that party must use its best endeavours to procure that that Condition is satisfied (only to the extent of the particular regulatory approval in the case of the Condition in clause 3.1(g)) as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if the Target and the Bidder are specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that

Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and

- (c) the Target and the Bidder must each, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

### 3.3 Obligations in relation to regulatory approvals

Without limiting clause 3.2, to the extent that clause 3.2 requires a party to use best endeavours to procure that a regulatory consent, waiver or approval is obtained, that party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory consent, waiver or approval is obtained and take all procedural steps it is responsible for as part of such consent, waiver or approval process, including responding to requests for information at the earliest practicable time and using its best endeavours to obtain such consent, waiver or approval as soon as practicable after the date of this agreement;
- (b) consult with the other party in advance of, and before sending, all communications with, or submissions or applications to, any Regulatory Authority relating to any regulatory consent, waiver or approval and provide the other party with a draft copy of such communications, submissions or applications as soon as practicable and consider in good faith any reasonable comments received from the other party;
- (c) keep the other party informed of progress in relation to each such regulatory consent, waiver or approval and of any material matters raised by, or conditions, material actions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory consent, waiver or approval; and
- (d) provide copies, on a confidential basis, to the other party of all documents and other communications provided to and received from each relevant Regulatory Authority in relation to each such regulatory consent, waiver or approval (including before the date of this agreement),

provided that:

- (e) in relation to clause 3.3(d), the party applying for the consent, waiver or approval may withhold or redact information or documents if and to the extent that they are confidential to a Third Party;
- (f) nothing in this clause 3.3 requires a party to disclose materially commercially sensitive information to the other party and so such information can be redacted; and
- (g) the party applying for the consent, waiver or approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory consent, waiver or approval with all assistance and information reasonably requested by the applicant in connection with the application and submissions for obtaining that consent, waiver or approval.

### 3.4 Notice in relation to satisfaction of Conditions

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
  - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
  - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as reasonably practicable after receipt of that notice, (in any event before the Decision Time) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

### 3.5 Waiver of Conditions

- (a) A Condition is only for the benefit of:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
  - (ii) if both the Target and the Bidder are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
  - (i) if the Condition is for the benefit of one party, by that party by written notice to the other party; or
  - (ii) if the Condition is for the benefit of both the Target and the Bidder, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or

- (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### 3.6 Consultation on failure of Conditions

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition;
- (b) there is an act, failure to act, event or occurrence which will, or which either party becomes aware will, prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,

then the Target and the Bidder must consult, acting reasonably and in good faith, with a view to determining whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court;
- (f) to extend the End Date; or
- (g) do all, or any combination of, the matters listed in clauses 3.6(d) to 3.6(f) (inclusive).

### 3.7 Failure to agree

If the Target and the Bidder are unable to reach an agreement under clause 3.6 within 5 Business Days after the delivery of the notice under that clause (or any shorter period ending at the Decision Time) then, in each case before the Delivery Time:

- (a) subject to clauses 3.7(b) and 3.8, either party may terminate this agreement by writing to the other party; or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this agreement by writing to the other party.

### 3.8 Exception

A party will not be entitled to terminate this agreement pursuant to clause 3.7 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:

- (a) a breach of this agreement by that party; or
- (b) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.

## 4. Implementation of the Scheme

### 4.1 The Target's obligations

The Target must use its best endeavours to implement the Scheme in accordance with the Timetable and, in particular, the Target must:

- (a) **(Scheme Booklet)** as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report and any Investigating Accountant's Report) in accordance with all applicable laws and provide a draft of the Scheme Booklet to the Bidder;
- (b) **(Consult with the Bidder in relation to the Scheme Booklet)** consult with the Bidder and its Representatives (acting reasonably and in good faith) as to the content and presentation of the Scheme Booklet, including:
  - (i) allowing the Bidder and its Representatives a reasonable opportunity to review and make comments on the draft Scheme Booklet, and if such comments relate to the Bidder Information, the Target must adopt such suggested amendments;
  - (ii) taking any reasonable comments made by the Bidder and its Representatives into account in good faith when producing a revised draft of the Scheme Booklet; and
  - (iii) obtaining the Bidder's and Bidder Nominee's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) such consent not to be unreasonably withheld or delayed;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet, and if, after the date of public release of the initial Independent Expert's Report, the Target proposes to provide any new or additional information to the Independent Expert, provide a copy of that information to the Bidder and consult with the Bidder and its Representatives in relation to that information, including by having regard to (acting reasonably and in good faith) all comments from the Bidder and its Representatives in relation to that information;
- (d) **(Approval of draft Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (e) **(ASIC review)** as soon as reasonably practicable, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act and:
  - (i) liaise with ASIC as necessary and to the extent reasonably practicable during the Regulatory Review Period; and
  - (ii) keep the Bidder informed in relation to any matters raised by ASIC in connection with the Scheme Booklet or the Scheme and use reasonable endeavours to consult with the Bidder to resolve any such matters;
- (f) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
  - (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and



- (ii) a letter stating that, pursuant to section 411(17)(b) of the Corporations Act, ASIC has no objection to the Scheme;
- (g) **(Court documents)** prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws and provide the Bidder with copies of those documents, and consider in good faith comments on, and suggested amendments to, those documents from the Bidder and its Representatives prior to filing those documents with the Court;
- (h) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (i) **(Approval of Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to Target Shareholders;
- (j) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information, the Independent Expert's Report, any Investigating Accountant's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet);
- (k) **(Register Scheme Booklet)** request that ASIC registers the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (l) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting;
- (m) **(Update Scheme Booklet)** if it becomes aware of information after the date of despatch of the Scheme Booklet, which is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable:
- (i) inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law; and
  - (ii) to the extent it is reasonably practicable to do so, provide the Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 4.1(m);
- (n) **(ASX listing)** use its best endeavours to ensure that the Target continues to be admitted to ASX, and that Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day immediately following the Implementation Date;
- (o) **(Suspension)** apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;
- (p) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(b)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;



- (q) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Bidder by 5:00 pm on the Business Day prior to the Second Court Date;
- (r) **(Implementation of Scheme)** if the Scheme is approved by the Court:
- (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00 pm on the Business Day following the day of receipt of such office copy (or such other date as is agreed between the Target and the Bidder in writing);
  - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iii) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme; and
  - (iv) subject to the Bidder satisfying its obligations under clause 5.1(b), on the Implementation Date (or as soon as practicable thereafter):
    - A. execute proper instruments of transfer and effect the transfer of Scheme Shares to the Bidder Nominee in accordance with the Scheme; and
    - B. register all transfers of Scheme Shares to the Bidder Nominee in accordance with the Scheme;
- (s) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration to Target Shareholders, including meeting with key Target Shareholders at the reasonable request of the Bidder;
- (t) **(Deed of Cross Guarantee)** prior to the Delivery Time, deliver to the Bidder a fully executed deed of revocation relating to the deed of cross guarantee between the Target, SMS Operations Pty Ltd, SMS Asset Holdings Pty Ltd and Swick Engineering Pty Ltd;
- (u) **(Orexplere Demerger)** prior to the Delivery Time, the Target must undertake all steps required to give effect to, or otherwise be in a position to give effect to, the Orexplore Demerger on or before the Implementation Date, and the Target must as a part of that transaction, obtain an indemnity from, and provide an indemnity in favour of, the demerged entity, effective from the date of the demerger, to the effect that:
- (i) the demerged entity will have the entire economic benefit and risk of the demerged entity group's business, and will assume all liabilities of that business, to the extent that the liabilities are caused by the acts or omissions of an entity in the demerged group or their directors or employees (including all debt and guarantees provided by the Target Group related to the business of Orexplore), as if the demerged entity had owned and operated that business at all times;
  - (ii) the Target Group (excluding the demerged entity) will have the entire economic benefit and risk of the Target Group business (excluding the business of the demerged entity) and will assume all liabilities of that

Target Group business, to the extent that the liabilities are caused by the acts or omissions of an entity in the Target Group or their directors or employees, as if it had operated and owned that business at all times; and

- (iii) the demerged entity will indemnify the Target against any loss whatsoever in connection with the Orexplore Demerger (including any Taxes, duties and tax costs, grossed up for any Taxes payable by the Target on any such indemnity payment),

each subject to the terms of the Demerger Agreement, and the Target must not release, or otherwise diminish the liability of, any demerged entity from its indemnity. The split of assets and liabilities between the demerged entity group's business and the Target Group business (excluding the business of the demerged entity) must be undertaken in accordance with the separation principle above. For the avoidance of doubt, if there is any inconsistency between the terms of the Demerger Agreement and this clause, the terms of the Demerger Agreement will take precedence;

- (v) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this agreement and applicable laws; and
- (w) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

## 4.2 The Bidder's obligations

The Bidder and the Bidder Nominee must use their best endeavours to assist the Target to implement the Scheme in accordance with the Timetable and, in particular, the Bidder must:

- (a) **(Draft of the Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with the Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;
- (b) **(Final form of the Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the draft of the Scheme Booklet provided by the Target and provide comments on that draft as soon as reasonably practicable and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Scheme Booklet;
- (e) **(Investigating Accountant)** promptly provide all assistance and information reasonably requested by any Investigating Accountant to enable it to prepare any report for inclusion in the Scheme Booklet;
- (f) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Target all evidence of such processes as may be reasonably requested;
- (g) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Target or its Representatives in connection with:

- (i) the preparation of the Scheme Booklet (including any supplemental disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and
- (ii) the Target in applying for any regulatory modifications determined appropriate or necessary by the Target (and provide any necessary consents in relation to such applications);
- (h) **(Liaise with ASIC and ASX)** provide all reasonable assistance requested by the Target to assist the Target to resolve any matters raised by ASIC or ASX regarding the Scheme Booklet or the Scheme;
- (i) **(Approval of the Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Scheme Booklet, and in any event before a draft of the Scheme Booklet is lodged with ASIC and if required by the Target again before the Scheme Booklet is despatched to Target Shareholders, confirm in writing to the Target that:
- (i) the Bidder and the Bidder Nominee consent to the inclusion of the Bidder Information in the Scheme Booklet (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) such consent not to be unreasonably withheld or delayed; and
- (ii) the Bidder Information in the form and context in which it appears in the draft of the Scheme Booklet is not misleading or deceptive, does not contain any omission and is in a form appropriate for despatch to Target Shareholders (subject to the approval of the Court);
- (j) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll to enter into the Deed Poll, and deliver the executed Deed Poll to the Target;
- (k) **(Representation)** procure that, if requested by the Target, it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Bidder and Bidder Nominee will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (l) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Target by 5:00 pm on the Business Day prior to the Second Court Date;
- (m) **(Official quotation)** apply to ASX for official quotation by ASX of the New Bidder Shares to be issued to Scheme Shareholders pursuant to the Scheme and use its best endeavours to obtain the approval of ASX for official quotation (subject to customary conditions and to the Scheme becoming Effective) no later than the Delivery Time;
- (n) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll;
- (o) **(Despatch of Holding Statements)** despatch holding statements to Scheme Shareholders for the New Bidder Shares issued to those Scheme Shareholders pursuant to the Scheme on the Implementation Date;
- (p) **(Promote merits of Transaction)** participate in efforts requested by the Target to promote the merits of the Transaction and the Scheme Consideration, including

meeting with key employees of the Target and key Target Shareholders at the request of the Target;

- (q) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this agreement and applicable laws.
- (r) **(Other things necessary)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

#### 4.3 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the Target and the Bidder, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), the Target will, acting in good faith, make such amendments to that information in the Scheme Booklet as the Bidder may reasonably require.

#### 4.4 Responsibility statement

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) the Bidder and the Bidder Nominee are responsible for the Bidder Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information;
- (b) the Target is responsible for the Target Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Bidder (or the Bidder Nominee) will not be responsible for any Target Information and will disclaim any liability for the Target Information;
- (c) the Independent Expert is responsible for the Independent Expert's Report;
- (d) the Investigating Accountant is responsible for the Investigating Accountant's Report (if applicable); and
- (e) if the Scheme Booklet contains a statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders, that tax adviser is responsible for that letter.

#### 4.5 Reconstitution of the Target Board

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 5, the Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of the Target of such persons as nominated by the Bidder in writing to the Target, subject to those persons being appointed having provided to the Target a duly signed consent to act as a director of the relevant companies; and
- (b) procure that the directors of the Target and each Subsidiary of the Target which the Bidder nominates resign from the board of each relevant entity.

#### 4.6 Removal of the Target from the official list of ASX

Subject to the Scheme becoming Effective, the Target must take all steps necessary for the Target to be removed from the official list of ASX with effect from the close of business on the

Business Day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date, and the Target and the Bidder (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

## 4.7 Court proceedings

Without limiting clause 4.2(k) above:

- (a) the Bidder is entitled to separate representation at all Court proceedings relating to the Scheme (at its own cost); and
- (b) the Target must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by the Target or otherwise.

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## 5. Scheme Consideration

### 5.1 Obligations in respect of the Scheme Consideration

The Bidder agrees in favour of the Target (in the Target's own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to the Bidder Nominee of each Scheme Share under the Scheme, the Bidder will:

- (a) accept that transfer and execute any instruments of transfer required to effect it; and
- (b) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder for Scheme Shares in accordance with the terms of the Scheme.

### 5.2 Entitlement

For each Scheme Share held by a Scheme Shareholder at the Record Date, that Scheme Shareholder will be entitled to receive 0.2970 New Bidder Shares (**Scheme Consideration**).

### 5.3 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration comprising Bidder Shares is such that a fractional entitlement to a Bidder Share arises, then the entitlement of that Scheme Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole Bidder Share and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole Bidder Share.
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.3(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
  - (i) setting out their names and registered addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and

- (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. The Bidder Nominee in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

## 5.4 Ineligible Overseas Shareholders and Cash Out Shareholders

- (a) The Bidder will ensure that New Bidder Shares to which an Ineligible Overseas Shareholder or a Cash Out Shareholder would otherwise have been entitled will be issued to a nominee appointed by the Bidder (and approved by ASIC if required).
- (b) The Bidder will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
  - (i) sells on the financial market conducted by ASX all of the New Bidder Shares issued to the nominee pursuant to clause 5.4(a) in such manner, at such price and on such other terms as the nominee determines in good faith; and
  - (ii) remits to the Bidder the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Promptly after the last sale of New Bidder Shares in accordance with clause 5.4(b), the Bidder will pay to each Ineligible Overseas Shareholder and each Cash Out Shareholder the proportion of the net proceeds of sale received by the Bidder pursuant to clause 5.4(b)(ii) to which that Ineligible Overseas Shareholder or Cash Out Shareholder is entitled.
- (d) Neither the Bidder nor the Target gives any assurance as to the price that will be achieved for the sale of New Bidder Shares described in clause 5.4(b). The sale of the New Bidder Shares under this clause 5.4 will be at the risk of the Ineligible Overseas Shareholder or Cash Out Shareholder.
- (e) The Bidder must appoint the nominee at least 14 calendar days prior to the Scheme Meeting.

## 5.5 Status of New Bidder Shares

The Bidder covenants in favour of the Target (in its own right and on behalf of each Scheme Shareholder) that:

- (a) the New Bidder Shares issued as Scheme Consideration will, on their issue, rank equally in all respects with all other Bidder Shares on issue at the Effective Date, and the New Bidder Shares issued as Scheme Consideration will be entitled to participate in and receive any dividends, any distribution of capital and any other entitlements accruing in respect of Bidder Shares after the Effective Date;
- (b) it will use best endeavours to ensure that the New Bidder Shares issued as Scheme Consideration will be listed for quotation on the official list of ASX with effect from the Business Day after the Effective Date (or such later date as ASX



may require), initially on a deferred settlement basis and, with effect from the Business Day following the Implementation Date, on an ordinary (T+2) settlement basis; and

- (c) on issue, each New Bidder Share will be fully paid and, to the extent within the control of Bidder, free from any Encumbrance.

## **6. Conduct of business**

### **6.1 Conduct of the Target's business**

- (a) From the date of this agreement up to and including the Implementation Date, the Target must, and must procure that each entity of the Target Group will conduct the business and operations of the Target Group:
- (i) as a going concern in the ordinary and normal course and consistent with the business plans and budgets disclosed to the Bidder prior to the date of this agreement and otherwise on a basis consistent with that adopted in the previous two years, and must not make any significant change to the nature or scale of any activity comprised in its businesses and operations; and
  - (ii) substantially consistent with the manner in which the business and operations were conducted prior to the date of this agreement (subject to all applicable laws, regulations and requirements of Regulatory Authorities), including:
    - A. complying in all material aspects with all Material Contracts to which a Target Group member is a party to;
    - B. using reasonable endeavours to preserve its current business organisation, the services of its current officers and material employees and its current relationships with Regulatory Authorities, joint venturers, customers, suppliers, landlords, licensors, licensees and others with whom it has business dealings;
    - C. protecting and maintaining each of its physical assets in the normal course and consistent with past practices and maintaining appropriate and adequate insurance in respect of each of those assets which are insurable;
    - D. keeping and maintaining proper records of all its dealings and transactions relating to its business and operations;
    - E. ensuring that all amounts owing to trade or other creditors of the entity are paid in accordance with applicable payment terms;
    - F. consulting with the Bidder in relation to the preparation and approval of any budget or business plan relating to the Target businesses or operations;
    - G. ensuring that there is no occurrence in relation to the Target within their control that would constitute or be likely to constitute a Material Adverse Change;
    - H. not undertaking any action which would, or would reasonably be expected to, give rise to a Prescribed Occurrence; and

- I. conducting its business and operations in accordance with all applicable laws and regulations and sound industry practice.
- (b) Without limiting clause 6.1(a), from the date of this agreement up to and including the Implementation Date, the Target must not, and must procure that each other member of the Target Group does not:
- (i) acquire or agree to acquire any securities, business, asset, operation, entity or undertaking in a single or series of related transactions, other than in the ordinary course of business (and not contrary to the Target's financial year 2022 budget in aggregate, as disclosed in the Target Due Diligence Materials), the value of which is material to the Target Group as a whole;
  - (ii) dispose or agree to dispose of any securities, business, asset, entity or undertaking in a single or series of related transactions, other than in the ordinary course of business (and not contrary to the Target's financial year 2022 budget in aggregate, as disclosed in the Target Due Diligence Materials), the value of which is material to the Target Group as a whole;
  - (iii) incur, pay, discharge or satisfy any liability (including any right of recovery under any claim) under a contract, arrangement or understanding to the Target Group of more than \$500,000 other than in accordance with its terms;
  - (iv) commit to any business as usual funding in relation to Orexplore, or for Orexplore Technologies Limited or a Subsidiary of Orexplore Technologies Limited, other than as specified in the Target's financial year 2022 budget in aggregate, as disclosed in the Target Due Diligence Materials;
  - (v) other than as permitted under clause 6.1, commit to pay any amount to Orexplore above the Seed Funding Payment;
  - (vi) commit to any capital expenditure not disclosed in the Target's financial year 2022 budget in aggregate, as disclosed in the Target Due Diligence Materials;
  - (vii) enter into a loan, advance or financing arrangement (other than with another member of the Target Group or to any client under a margin loan or similar facility in the ordinary course of business) as lender;
  - (viii) enter into, vary or terminate any contract, joint venture, partnership or commitment involving total expenditure contrary to the Target's financial year 2022 budget in aggregate, as disclosed in the Target Due Diligence Materials;
  - (ix) vary any employment agreement with one or more of its officers, directors, other executives, or employees, or accelerate or otherwise increase remuneration, compensation or rights to benefits for any of the aforementioned, other than:
    - A. in accordance with an existing contractual obligation to do so;
    - B. in the ordinary course of business including variations resulting from annual pay reviews;
    - C. pursuant to an obligation under the Target Group's policies and guidelines in effect as at the date of this agreement (the



terms of which have been disclosed in writing to the Bidder prior to the date of this agreement); or

D. as required by law or regulation;

- (x) enter into a new employment contract with a potential employee of the Target Group in which the total employment costs payable to that potential or existing employee exceed \$300,000 per annum;
  - (xi) enter into any enterprise bargaining agreement other than in the ordinary course of business;
  - (xii) do or omit to do anything which might result in the variation, termination, suspension, revocation or non-renewal of any licence or authorisation held by the Target Group which is material to the operation of its business;
  - (xiii) change any accounting policies or practices;
  - (xiv) make any material tax election or settle or compromise any material liability relating to tax unless the Target has received an opinion from a Queen's Counsel that the settlement or compromise is in the best interests of the Target Group;
  - (xv) enter into, or resolve to enter into, a transaction with a related party of the Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a member of the Target Group) as defined in section 228 of the Corporations Act, other than the Orexplore Arrangements;
  - (xvi) incur any additional financial indebtedness, other than draw-downs of existing debt facilities or additional financial indebtedness incurred in the ordinary course of business or in respect of the Seed Funding Payment;
  - (xvii) guarantee or indemnify the obligations of any other person other than a member of the Target Group;
  - (xviii) cease, or threaten to cease, to carry on a substantial part of its business;
  - (xix) settle or compromise any new claim, litigation, investigation, arbitration or other like proceeding in relation to any member of the Target Group the value of which exceeds \$300,000 (individually or in aggregate);
  - (xx) engage in any conduct that is inconsistent with the terms of the Demerger Agreement; or
  - (xxi) authorise, agree, offer, commit or resolve to do any of the things referred to in clauses 6.1(b)(i) to 6.1(b)(xx), whether conditionally or otherwise.
- (c) Nothing in this clause restricts the ability of the Target or any member of the Target Group to take any action:
- (i) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
  - (ii) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;

- (iii) that has been Disclosed by the Target prior to the date of this agreement;
- (iv) undertaken in connection with the Orexplore Demerger and for the avoidance of doubt includes a member of the Target Group making the Seed Funding Payment and the cancellation of the Target Warrants;
- (v) to avoid the occurrence of a Material Adverse Change; or
- (vi) required by law or otherwise arising as a result of any court or Regulatory Authority order, injunction or undertaking.

## 6.2 Information obligations

- (a) Subject to clause 6.2(b), between the date of this agreement and the Implementation Date, the Target must:
  - (i) consult with the Bidder and obtain consent from the Bidder in relation to all major business decisions of the Target Group, including, for the avoidance of doubt, concerning the Orexplore Demerger (save for the Target's consideration of the Scheme or any Competing Proposal and anything specified in the Target's financial year 2022 budget, as disclosed in the Target Due Diligence Materials);
  - (ii) provide the Bidder with details of any Material Contracts which are proposed to be entered into;
  - (iii) promptly after becoming aware of a matter material to the Transaction, provide the Bidder with sufficient information such that the Bidder can assess the nature and potential impact of that matter on the Transaction; and
  - (iv) promptly provide the Bidder with a notice in writing of any breach of this agreement or any matters, events or occurrences which could be reasonably likely to result in a breach of this agreement.
- (b) The Target is not required to comply with clause 6.2(a) where the Target Board has determined in good faith and having considered written advice from external legal advisers that to undertake the relevant action would likely:
  - (i) involve a breach of:
    - A. the fiduciary or statutory duties owed by any Target director; or
    - B. any legal obligations of the Target or any Target director; or
  - (ii) otherwise be unlawful.
- (c) The Target and the Bidder acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.
- (d) The Bidder acknowledges that in providing consent for any major business decision in accordance with clause 6.2(a), it must act reasonably.

### 6.3 Scheme Implementation Committee

- (a) The parties must establish a Scheme Implementation Committee as soon as reasonably practicable after the date of this agreement and work together in good faith, consult with each other and plan to:
- (i) scope the workplan, composition and schedule for the Scheme Implementation Committee in relation to implementing the Scheme and transitioning the business of the Target Group to the Bidder;
  - (ii) implementing the Scheme; and
  - (iii) assist with the initial transition of the management of the business and the affairs of the Target Group to the Bidder following the implementation of the Scheme by engaging in any discussions as reasonably required by the Bidder.
- (b) At meetings of the Scheme Implementation Committee, the Target must provide an update on a monthly basis to the Bidder on the quantum of the Target's external costs paid or incurred in relation to the Scheme or the transactions contemplated by this agreement (including all legal, financial, printing, shareholder communication and any other costs).

### 6.4 Counterparty consents

The Target and the Bidder will cooperate with each other in good faith, and will take all actions reasonably required, to seek to identify and obtain all counterparty consents which are necessary or desirable to implement the Scheme (including under the Change of Control Contracts and other consents to avoid breach of any change of control provisions).

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## 7. Recommendation, intentions and announcements

### 7.1 Target Board Recommendation and Voting Intention

- (a) The Target must ensure that the Target Announcement and the Scheme Booklet state to the effect that each Target director:
- (i) unanimously recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
  - (ii) intends to cause any Target Shares in which he or she has a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),
- and does not publicly change, withdraw or modify their Recommendation or Voting Intention, unless:
- (iii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders;
  - (iv) there is a Superior Proposal and the Target Board, after considering the matter in good faith and after taking advice from external legal advisers, determines that it no longer considers the Scheme to be in the best interests of Target Shareholders;
  - (v) an event in clause 14.3 occurs and the Target has provided a notice of termination to the Bidder; or

- (vi) there is a failure to satisfy a Condition before a party is required to do so under clause 3.
- (b) For the purposes of clause 7.1(a), customary qualifications and explanations contained in the Scheme Booklet and any public announcements by the Target in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made:
  - (i) in the absence of a Superior Proposal;
  - (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interest of Target Shareholders'; and
  - (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders'.

will not be regarded as a failure to make, or a change, withdrawal, modification or qualification of, a recommendation in favour of the Scheme.

## 7.2 Confirmation

The Target represents and warrants to the Bidder that it has been advised by each Target director in office at the date of this agreement that he or she will make and maintain their Recommendation and Voting Intention unless permitted to change or withdraw it in accordance with this agreement.

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## 8. Target Performance Rights and Target Warrants

As at the Delivery Time, the Target must have put arrangements in place so that all Target Performance Rights and Target Warrants will either vest (and have resulted in the issue of Target Shares), lapse or otherwise be cancelled or terminated before the Record Date.

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## 9. Exclusivity arrangements

### 9.1 No current discussions

- (a) The Target represents and warrants that, as at the date of this agreement:
  - (i) it is not a party to any agreement or arrangement with any third party entered into for the purposes of facilitating an actual, proposed or potential Competing Proposal;
  - (ii) it is not, directly or indirectly, in any negotiations or discussions, and has ceased any existing negotiations or discussions, with any person in respect of any actual, proposed or potential Competing Proposal; and
  - (iii) any due diligence access granted to any third party for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated.
- (b) Subject to clause 9.6, the Target undertakes, in respect of any confidentiality or other agreement it has with any person that has been entered into in the last 12 months in connection with the provision of confidential information to that person or in connection with a Competing Proposal, to not waive, and to promptly enforce

(including in respect of an anticipated breach), any standstill obligations under any such agreements.

## 9.2 No shop

During the Exclusivity Period, the Target must not, and must ensure that any member of the Target Group or its Representatives do not, except with the prior written consent of the Bidder, solicit, encourage, initiate or invite any Competing Proposal or initiate enquiries, expressions of interest, negotiations or discussions with any Third Party or communicate any intention to do any of these things which may reasonably be expected to encourage or lead to, an expression of interest, offer or proposal from any person in relation to an actual, proposed or potential Competing Proposal.

## 9.3 No talk and no due diligence

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that any member of the Target Group or its Representatives do not, except with the prior written consent of the Bidder, directly or indirectly:

- (a) enter into, continue or participate in any negotiations or discussions with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal;
- (b) enter into any agreement, arrangement or understanding with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal;
- (c) provide or make available any information to a Third Party for the purposes of enabling that party to make an actual, proposed or potential Competing Proposal or any agreement, arrangement or understanding that might be reasonably expected to lead to a Competing Proposal; or
- (d) communicate any intention to do any of the things listed in clauses 9.3(a), 9.3(b) or 9.3(c),

even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Target, any member of the Target Group, any of its Representatives or the person has publicly announced the Competing Proposal.

## 9.4 Notification of approaches

- (a) During the Exclusivity Period, the Target must promptly notify the Bidder (and in any event within 1 Business Day of becoming aware) if:
  - (i) it (or any member of the Target Group or its Representatives) receives or becomes aware of an approach or attempt by any person regarding any actual, proposed or potential Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal; or
  - (ii) it (or any member of the Target Group or its Representatives) receives or becomes aware of a proposal made to the Target or any member of the Target Group or its Representatives regarding an actual, proposed or potential Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal;

whether direct or indirect and whether or not that Competing Proposal was solicited, invited, encouraged or initiated by the Target, any member of the Target Group or any of its Representatives.

## 9.5 Exclusivity of Due Diligence

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that neither it nor any member of the Target Group or any of its Representatives, in relation to an actual, proposed or potential Competing Proposal:

- (a) enables any other person to undertake due diligence investigations on any member of the Target Group, any of the operations or assets of the business of the Target Group or any part thereof;
- (b) makes available to any other person, or permits any other person to receive any non-public information relating to any member of the Target Group, any of the operations or assets of the business of the Target Group or any part thereof;
- (c) makes available to any other person, or permits any other person to have access to, any officers or employees of the Target Group; or
- (d) makes available to any other person, or permits any other person to have access to any premises or sites used, leased, licenced or owned by the Target Group,

other than the Bidder and any other person nominated by the Bidder (whether in the course of due diligence or otherwise).

## 9.6 Limitation to no talk and no due diligence

Clauses 9.1(b), 9.3, 9.4(a) and 9.5 do not apply to the extent that they restrict the Target from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not directly or indirectly solicited, invited, encouraged or initiated by the Target, any member of the Target Group or any of its Representatives in breach of clause 9) provided that the Target Board has first determined, acting in good faith, that:

- (a) after consultation with its financial advisors, such a genuine Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisors (who must be reputable advisers experienced in transactions of this nature), taking or refusing to take such action in compliance with clauses 9.1(b), 9.3, 9.4(a) or 9.5 in relation to such genuine Competing Proposal would be reasonably likely to constitute a breach of the Target's Board's fiduciary or statutory obligations,

and provided that to the extent the Target, any member of the Target Group or its Representatives propose to provide information to which clause 9.4(a) applies, the Target has entered into a binding confidentiality agreement with the relevant person who will receive that information, and either:

- (c) the terms of the confidentiality agreement are no less favourable to the Target than the Confidentiality Deed; or
- (d) the Target agrees to amend the terms of the Confidentiality Deed such that the obligations imposed on the Bidder under that agreement are no less favourable to the Bidder than the obligations imposed on the relevant person who will receive that information are to that other person.

## 9.7 Matching right

- (a) During the Exclusivity Period, the Target:
  - (i) must not enter into any legally binding agreement pursuant to which a Third Party proposes, or proposes to undertake to give effect to a Competing Proposal; and



- (ii) must use reasonable endeavours to procure that none of its directors change, withdraw or modify their Recommendation or Voting Intention in favour of the Scheme, publicly recommend, support or endorse a Competing Proposal or make any public statement to the effect that they may do so at a future point in time (provided that a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board and its Advisors will not contravene this clause),
- unless:
- (iii) the Target Board, acting in good faith and in order to satisfy what the directors of the Target consider to be their statutory or fiduciary duties (having received written legal advice from their external legal adviser) determine that the Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal;
- (iv) the Target has provided the Bidder with the material terms and conditions of the Competing Proposal (including details of the party making the proposal);
- (v) the Target has given the Bidder at least 2 Business Days after the provision of the information referred to in paragraph 9.7(a)(iv) above to provide a matching or superior proposal to the terms of the relevant Competing Proposal (**Bidder Counter Proposal**); and
- (vi) the Bidder has not in that time period provided a Bidder Counter Proposal that the Target directors determine has terms and conditions (taken as a whole) that are more favourable than those of the relevant Competing Proposal and would deliver a superior outcome for Target Shareholders.
- (b) The Target must use its reasonable endeavours to procure that its directors, within 2 Business Days of receiving the Bidder Counter Proposal, consider the Bidder Counter Proposal in good faith.
- (c) If the notification provided by the Target to the Bidder is that the Target Board has determined that the Counterproposal:
- (i) would provide an equal or superior outcome to Target Shareholders compared to the Competing Proposal, then the Target and the Bidder must use their reasonable endeavours to agree any necessary amendments to this agreement and agree such other documents that are reasonably necessary to reflect the Counterproposal as soon as reasonably practicable and the Target must use reasonable endeavours to procure that each of the directors of the Target continue to recommend that Target Shareholders vote in favour of the Scheme (as modified by the Counterproposal) (subject to the same qualifications as set out in clause 7.1); or
- (ii) would not provide an equal or superior outcome to Target Shareholders compared to the Competing Proposal, then the Bidder may take steps to amend the Counterproposal to address the reasons given by the Target for that determination and must provide such revised Counterproposal to the Target within a further period of 2 Business Days, and if the Bidder does so to the satisfaction of the Target Board, then the process in clause 9.7(c)(i) applies to that revised Counterproposal.
- (d) For the avoidance of doubt, if the Target directors determine that the terms and conditions of the Bidder Counter Proposal (taken as a whole) are more favourable than those of the relevant Competing Proposal and would deliver a superior



outcome for Target Shareholders, the Target and the Bidder must each use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable, and the Target must use its best endeavours to procure that each of its directors makes a public statement recommending the Bidder Counter Proposal to Target Shareholders.

## 9.8 Normal provision of information

Nothing in this clause 9 prevents the Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its employees, auditors, consultants, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law; or
- (e) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

## 9.9 Legal advice

The Target acknowledges that it has received legal advice on this agreement and the operation of this clause 9 from reputable legal advisers experienced in transactions of this nature.

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# 10. Reimbursement of Costs

## 10.1 Rationale and nature of payment

Each party acknowledges and agrees that:

- (a) it has required the inclusion of this clause 10 in the absence of which it would not have entered into this agreement or otherwise agreed to implement the Scheme, subject to the terms and conditions in this agreement;
- (b) it believes that the Scheme will provide significant benefits to it and its shareholders, and that it is reasonable and appropriate that the Target (in respect of the Target Payment) and the Bidder (in respect of the Bidder Payment) agree to the inclusion of this clause 10 in order to secure the other party's execution of this agreement and agreement to implement the Scheme, subject to the terms and conditions in this agreement;
- (c) it has received legal advice on the operation of this clause 10 from reputable legal advisers experienced in transactions of this nature;
- (d) the amount payable by the Target (in respect of the Target Payment) pursuant to clause 10.2 and by the Bidder (in respect of the Bidder Payment) pursuant to clause 10.3 is to be purely and strictly compensatory in nature so as to compensate the Bidder (in respect of the Target Payment) and the Target (in respect of the Bidder Payment) for the following:
  - (i) advisory costs relating to the Scheme;
  - (ii) costs of management and directors' time;

- (iii) out-of-pocket expenses relating to the Scheme;
- (iv) reasonable opportunity costs incurred by the Bidder or the Target (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which the Bidder or the Target (as applicable) could have developed to further its business and objectives; and
- (v) damage to the Bidder's or the Target's (as applicable) reputation associated with a failed transaction and the implications of that damage to the Bidder's or the Target's (as applicable) business; and
- (e) the costs incurred by each party are of a nature that cannot be accurately quantified, and that a genuine pre-estimate of the costs to be incurred by each of the Target and the Bidder would equal or exceed the compensatory amount payable under clause 10.2 and clause 10.3, respectively.

## 10.2 The Target Payment

The Target agrees to pay the Target Payment to the Bidder without deduction, set-off or withholding if:

- (a) **(Competing Proposal)** a Competing Proposal is announced before the earlier of the Second Court Date and termination of this agreement, and within 12 months after the date of this agreement, the Third Party who announced the Competing Proposal (or any of its Associates) completes that Competing Proposal;
- (b) **(Change of recommendation)** during the Exclusivity Period, a majority of the Target directors fail to recommend the Scheme or publicly change or withdraw their Recommendation or Voting Intention or publicly recommend a Competing Proposal and the Transaction does not complete, unless it occurs after:
  - (i) the Independent Expert has concluded that the Scheme is not in the best interests of Target Shareholders;
  - (ii) the Independent Expert changes or publicly withdraws its conclusion that the Scheme is in the best interests of Target Shareholders;
  - (iii) the Target has become entitled to terminate this agreement pursuant to clause 14.3(b) and has given the appropriate notice to the Bidder; or
  - (iv) there is a failure to satisfy a Condition which is for the benefit of the Target or both parties, before a party is required to do so under clause 3.
- (c) **(Termination)** the Bidder terminates this agreement in accordance with clause 14.2(b)(i) or 14.2(b)(ii) and the Transaction does not complete.

## 10.3 The Bidder Payment

The Bidder agrees to pay the Bidder Payment to the Target without deduction, set-off or withholding if:

- (a) at any time after the date of this agreement, the Target terminates this agreement in accordance with clause 14.3(b)(i) or 14.3(b)(iii); or
- (b) the Bidder does not pay or procure the payment of the Scheme Consideration in accordance with the terms and conditions of this agreement, the Scheme and the Deed Poll.

## 10.4 Timing of payment

- (a) A demand by a party for payment of the Target Payment under clause 10.2 or the Bidder Payment under clause 10.3 must:
- (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of the Bidder or a Related Body Corporate into which the Target is to pay the Target Payment or the Target or a Related Body Corporate into which the Bidder is to pay the Bidder Payment (as applicable).
- (b) The Target must pay the Target Payment into the account nominated by the Bidder and the Bidder must pay the Bidder Payment into the account nominated by the Target (as applicable), without deduction, set-off or withholding, within 10 Business Days after receiving a valid demand for payment where the Bidder is entitled under clause 10.2 to the Target Payment or the Target is entitled under clause 10.3 to the Bidder Payment (as applicable).

## 10.5 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Payment or the Bidder Payment (as applicable) (**Impugned Amount**):
- (i) would, if paid, be unlawful for any reason;
  - (ii) involves a breach of the fiduciary or statutory duties of the Target Board; or
  - (iii) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,
- then
- (iv) the requirement to pay the Target Payment or the Bidder Payment (as applicable) does not apply to the extent of the Impugned Amount; and
  - (v) if the Bidder or the Target (as applicable) has received the Impugned Amount, it must refund it within 5 Business Days of the final determination.
- (b) The Target and the Bidder must not make, or cause to be made, any application to the Takeovers Panel or a Court for or in relation to a determination referred to in this clause 10.5.

## 10.6 One payment only

- (a) Where the Target Payment becomes payable to the Bidder under clause 10.2 and is actually paid to the Bidder, the Bidder cannot make any claim against the Target for the payment of any subsequent Target Payment.
- (b) Where the Bidder Payment becomes payable to the Target under clause 10.3 and is actually paid to the Target, the Target cannot make any claim against the Bidder for the payment of any subsequent Bidder Payment.

## 10.7 No payment if Scheme Effective

Despite anything to the contrary in this agreement (including the occurrence of any event in clause 10.2 or clause 10.3), neither the Target Payment nor the Bidder Payment will be payable if the Scheme becomes Effective and if any amount has already been paid, it must be refunded by the Bidder or the Target (as applicable) within 10 Business Days after the Scheme becomes Effective.

## 10.8 The Target's limitation of liability

- (a) Notwithstanding any other provision of this agreement, the maximum liability of the Target to all other persons under or in connection with this agreement, including in respect of any breach of this agreement and the indemnity in clause 12.5, will be the amount of the Target Payment.
- (b) A payment made by the Target in accordance with this clause 10 represents the sole and absolute liability of the Target and any member of the Target Group under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target under or in connection with this agreement.
- (c) The amount of the Target Payment to be paid to the Bidder under this clause 10 will be reduced by the amount of any loss or damage recovered by the Bidder in relation to a breach of this agreement and the indemnity clause 12.5.

## 10.9 The Bidder's limitation of liability

- (a) Notwithstanding any other provision of this agreement, the maximum liability of the Bidder to all other persons under or in connection with this agreement, including in respect of any breach of this agreement and the indemnity in clause 12.2, will be the amount of the Bidder Payment.
- (b) A payment made by the Bidder in accordance with this clause 10 represents the sole and absolute liability of the Bidder and any member of the Bidder Group under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder under or in connection with this agreement.
- (c) The amount of the Bidder Payment to be paid to the Target under this clause 10 will be reduced by the amount of any loss or damage recovered by the Target in relation to a breach of this agreement and the indemnity in clause 12.2.
- (d) Notwithstanding any other provision of this agreement, the Bidder Payment under this clause 10 will not be payable if the Orexplore Demerger has not been implemented in accordance with the Demerger Agreement prior to the Implementation Date.

## 10.10 Survival

Any accrued obligations under this clause 10 survive termination of this agreement.

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# 11. Liability of directors, officers and employees

## 11.1 Liability of directors, officers and employees

To the maximum extent permitted by law, each party releases all rights against, and agrees that it will not make any claim against, the other party's past or present Representatives in respect of any matter arising in connection with this agreement or the Transaction, including:

- (a) any breach of any representation, warranty or covenant of this agreement;
- (b) any disclosure containing any statement which is false or misleading (whether by omission or otherwise);
- (c) any failure to provide information; or
- (d) whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise,

except:

- (e) in the case of the release in clause 11.1(a), to the extent arising from the fraud of the relevant Representative; and
- (f) otherwise, to the extent arising from the fraud, dishonesty or wilful default of the relevant Representative.

## 11.2 Directors and officers insurance

- (a) The Bidder acknowledges and agrees that:
  - (i) subject to clause 11.2(b), prior to the Implementation Date, the Target may arrange and pay all premiums required for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary on, so far as practicable, terms (including as to limits of liability and deductibles) no less favourable than under the Policy; and
  - (ii) the Run Off Cover will cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date.
- (b) Prior to purchasing any Run Off Cover, the Target must consult with the Bidder and provide the Bidder with the terms of the proposed Run Off Cover, including the price.

## 11.3 Obligations in relation to directors and officers insurance

From the Implementation Date, the Bidder must procure that the Target does not:

- (a) vary or cancel the Policy or Run Off Cover; or
- (b) unless required under the Policy or Run Off Cover, commit any act or omission that may prejudice any claim by a Beneficiary under the Policy or Run Off Cover.

## 11.4 Directors and officers indemnities

Without limiting any other term of this agreement, the Bidder undertakes that it will, from the Implementation Date and in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a member of the Target Group (**Relevant Entity**) in favour of a director, officer or employee of any member of the Target Group, whether past or present, (**Indemnified Person**) from time to time procure that:

- (a) the Relevant Entity complies with the Relevant Deed; and
- (b) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from another member of the Target Group of good financial standing or from the Bidder (at the Indemnified

Person's election) on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed as at the Implementation Date.

## **11.5 Compliance with law and benefit**

- (a) Clause 11.1 and clause 11.4 are subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The Bidder acknowledges and agrees that the Target holds the benefit of this clause 11 to the extent it relates to each Target Indemnified Party as trustee for them, and, as such, each such Target Indemnified Party may enforce this clause 11 against the Bidder.
- (c) The Target acknowledges and agrees that the Bidder holds the benefit of this clause 11 to the extent it relates to each Bidder Indemnified Party as trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 11 against the Target.

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## **12. Representations, warranties and indemnities**

### **12.1 Representations and warranties by the Bidder and Bidder Nominee**

The Bidder and the Bidder Nominee (as relevant) represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties is true and correct in all material respects and is not misleading or deceptive:

- (a) as at the date of this agreement; and
- (b) as at 5:00 pm on the Business Day prior to the Second Court Date,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

### **12.2 The Bidder indemnity**

- (a) The Bidder and the Bidder Nominee acknowledge and agree that in entering into this agreement the Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Subject to clause 10.9, the Bidder indemnifies the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Bidder Warranties.

### **12.3 Qualification of the Bidder Warranties and the indemnity**

The Bidder Warranties and the indemnity under clause 12.2 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Bidder or Bidder Nominee under the Transaction Documents;
- (b) were within the actual knowledge of the Target or its Representatives as at the date of this agreement; or
- (c) have been Disclosed by the Bidder at least 3 Business Days prior to the date of this agreement.

## 12.4 Representations and warranties by the Target

The Target represents and warrants to the Bidder and the Bidder Nominee (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Target Warranties is true and correct in all material respects and is not misleading or deceptive:

- (a) as at the date of this agreement; and
- (b) as at 5:00 pm on the Business Day prior to the Second Court date,

unless the relevant Target Warranty is expressed to be given only at a particular time in which case it is given as at that time.

## 12.5 Target indemnity

- (a) The Target acknowledges and agrees that in entering into this agreement the Bidder, the Bidder Nominee and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Subject to clause 10.8, the Target indemnifies the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) and the Bidder Nominee against any loss suffered or incurred by reason of any breach of any of the Target Warranties.

## 12.6 Qualification of the Target Warranties and the indemnity

The Target Warranties and the indemnity under clause 12.5 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Target under the Transaction Documents;
- (b) were within the actual knowledge of the Bidder or its Representatives as at the date of this agreement; or
- (c) have been Disclosed by the Target at least 3 Business Days prior to the date of this agreement.

## 12.7 Notifications

Each party will promptly (and in any event, within 2 Business Days) advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 12, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

## 12.8 Status of representations and warranties

Each representation and warranty in this clause 12:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.



## 12.9 Status and enforcement of indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the Target, the Bidder and the Bidder Nominee, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

## 12.10 Necessary tense changes

For the purposes of clauses 12.1 and 12.4, the Bidder Warranties and the Target Warranties shall be read with any necessary adjustments to the tense used in the relevant warranty.

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## 13. Confidentiality and public announcements

### 13.1 Confidentiality Deed

The Target and the Bidder acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this agreement in respect of all information received by it from the other party on, before or after the date of this agreement and that the terms of this agreement will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

### 13.2 Survival of obligations

The rights and obligations of the Target and the Bidder in relation to confidential information under the Confidentiality Deed survive termination of this agreement.

### 13.3 Disclosure on termination of agreement

The parties agree that, if this agreement is terminated under clause 14, any party may disclose:

- (a) the fact that this agreement has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this agreement has been terminated to ASIC.

### 13.4 Public announcements

- (a) Immediately after execution of this agreement, the Target must issue the Target Announcement to ASX.
- (b) Immediately after execution of this agreement, the Bidder must issue the Bidder Announcement to ASX.
- (c) Where a party proposes or is required to make any subsequent public announcement or disclosure in connection with the Transaction or the Scheme, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and considering in good faith any such comments from the other party.

## 14. Termination and remedies

### 14.1 Limited termination events

This agreement may only be terminated by the Bidder or the Target in the circumstances contemplated by clauses 14.2 and 14.3, or if the Target and the Bidder agree in writing to terminate this agreement.

### 14.2 Termination by the Bidder

The Bidder may terminate this agreement at any time before the Delivery Time:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to the Target if:
  - (i) the Target is in material breach of any clause of this agreement (including in relation to the Target Warranties but other than clause 7.1) and:
    - A. the Bidder has given written notice to the Target setting out the relevant circumstances and stating an intention to terminate this agreement; and
    - B. the relevant circumstances are not remedied and have continued to exist for 10 Business Days from the time such notice is received by the Target (or any shorter period ending at the Delivery Time);
  - (ii) there is a Material Adverse Change or Prescribed Occurrence in respect of the Target;
  - (iii) the Target Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities; or
  - (iv) a Target director publicly withdraws, fails to make or adversely changes their Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal, for any reason.

### 14.3 Termination by the Target

The Target may terminate this agreement at any time before the Delivery Time:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to the Bidder if:
  - (i) the Bidder is in material breach of any clause of this agreement and:
    - A. the Target has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate this agreement; and
    - B. the relevant circumstances are not remedied and have continued to exist for 10 Business Days from the time such notice is received by the Bidder (or any shorter period ending at the Delivery Time); or

- (ii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders; or
- (iii) there is a Bidder Material Adverse Change or Bidder Prescribed Occurrence in respect of the Bidder.

#### 14.4 Effect of termination

If this agreement is terminated the provisions of this agreement (and all further obligations and liabilities of the parties under this agreement) shall cease to have effect except for the provisions of (and obligations set out in) this clause and clauses 1, 10, 11, 13, 14.5 and 15 to 17 (inclusive), 18.1 to 18.5 (inclusive), 18.7 to 18.11 (inclusive) and 19 which will survive termination.

#### 14.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or demand payment of the Target Payment or the Bidder Payment (as the case may be).

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### 15. GST

#### 15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 15.4(a) in relation to that supply.

#### 15.2 GST exclusive

Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.

#### 15.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

#### 15.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.

- (b) No payment of any amount pursuant to clause 15.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 15.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.4(a).
- (d) Clauses 15.4(a) to 15.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

## 16. Notices

### 16.1 How notice to be given

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

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) if to the Target:

Address: 64 Great Eastern Highway, South Guildford WA

Attention: Jitu Bhudia, CFO

Email: [jitu.bhudia@swickmining.com](mailto:jitu.bhudia@swickmining.com)

with a copy (for information purposes only) in each case to:

Email: [kent.swick@swickmining.com](mailto:kent.swick@swickmining.com)

if to the Bidder or the Bidder Nominee:

Address: 21 Baile Road, Canning Vale, 6155

Attention: Company Secretary

Email: [Company.Secretary@ddh1.com.au](mailto:Company.Secretary@ddh1.com.au)

with a copy (for information purposes only) in each case to:

Email: [Ben.mackinnon@ddh1.com.au](mailto:Ben.mackinnon@ddh1.com.au)

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this agreement; and

- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 16.1.

## 16.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;  
  
(in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (b) (in the case of delivery by hand) on delivery; and
- (c) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 16.1, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

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## 17. Entire agreement

The Transaction Documents and the Confidentiality Deed constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

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## 18. General

### 18.1 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

### 18.2 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

### 18.3 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

### 18.4 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

### 18.5 Counterparts

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

## 18.6 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

## 18.7 No merger

A party's rights and obligations do not merge on completion of any transaction contemplated by this agreement.

## 18.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.

## 18.9 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## 18.10 Stamp duties

The Bidder (or Bidder Nominee) must pay or procure the payment of all stamp duties and other duties together with any related fees, fines, penalties, interest or statutory charges, and similar Taxes in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement (other than in relation to the Orexplore Demerger).

## 18.11 Waivers

Without limiting any other provision of this agreement, the parties agree that:

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

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## **19. Governing law and jurisdiction**

### **19.1 Governing law**

This agreement is governed by the law applying in Western Australia.

### **19.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19.2(a).



## Schedule 1 - The Bidder Warranties

The Bidder and the Bidder Nominee (as relevant) represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that:

- (a) **(Validly existing)** Bidder and Bidder Nominee are each a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Bidder and Bidder Nominee of the Transaction Documents to which the Bidder and Bidder Nominee is party has been properly authorised by all necessary corporate action and the Bidder and Bidder Nominee each has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder and Bidder Nominee are party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder and Bidder Nominee is party (and the Bidder's or and Bidder Nominee's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of the Bidder (or Bidder Nominee, as relevant) or any of its Subsidiaries; or
  - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder, Bidder Nominee or any Subsidiaries is party, or by which the Bidder, Bidder Nominee or any of Subsidiaries is bound;
- (e) **(No approvals)** as far as the Bidder and Bidder Nominee are aware, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for it to execute and perform the Transaction Documents to which it is party;
- (f) **(Capital structure)** as at the date of this agreement, there are:
  - (i) 342,804,678 Bidder Shares on issue; and
  - (ii) 1,176,362 Bidder Performance Rights on issue,
 and the Bidder has not issued any other securities, instruments or rights which may convert into Bidder Shares which are still outstanding;
- (g) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
  - (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Target and the Target Indemnified Parties have relied, and will continue to rely, on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
  - (ii) the Bidder Information complies in all material respects with, and contains all information regarding the Bidder, the Bidder Nominee, the Bidder Group and the Scheme Consideration required by, all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
  - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of the Target, or has been extracted from announcements made by the Target to ASX regarding the Target Group) in the form and context in which it appears in the Scheme Booklet is

not misleading or deceptive in any material respect and does not contain any material omission;

- (iv) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
  - (v) all information provided by or on behalf of the Bidder or Bidder Nominee to the Independent Expert and the Investigating Accountant (if applicable) has been prepared and provided in good faith and on the understanding that the Independent Expert and the Investigating Accountant (if applicable) has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's and any Investigating Accountant's Report; and
- (h) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder or Bidder Nominee.

## Schedule 2 - The Target Warranties

The Target represents and warrants to the Bidder and the Bidder Nominee (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that:

- (a) **(Validly existing)** each Target Group member is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
  - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound;
- (e) **(Capacity)** it is not entering into this agreement as trustee of any trust or settlement or otherwise in a representative capacity;
- (f) **(No approvals)** no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for the Target to execute and perform the Transaction Documents to which it is a party;
- (g) **(Capital structure)** as at the date of this agreement, there are:
  - (i) 281,740,622 Target Shares on issue; and
  - (ii) 15 Target Warrants (estimated to be 343,843 shares at the end of the vesting period) on issue (agreed to be cancelled in connection with the Orexplere Demerger); and
  - (iii) 1,922,672 Target Performance Rights on issue,

and the Target or its Related Bodies Corporate have not issued any other securities, instruments or rights which may convert into Target Shares which are still outstanding;
- (h) **(Target Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
  - (i) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder, the Bidder Nominee and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;

- (ii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Corporations Regulations, Listing Rules and relevant Regulatory Guides);
- (iii) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to the Bidder or Bidder Nominee by or on behalf of the Target or has been extracted from announcements made by the Target to ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;
- (iv) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
- (v) all information provided by or on behalf of the Target to the Independent Expert and the Investigating Accountant (if applicable) has been prepared and provided in good faith and on the understanding that the Independent Expert and the Investigating Accountant (if applicable) has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report and any Investigating Accountant's Report;
- (i) **(Disclosure)** the Target is in compliance with all of the disclosure requirements under the Listing Rules, including its continuous disclosure obligations under Listing Rule 3.1 and, as at the date of this agreement, following the making by the Target of the Target Announcement to ASX pursuant to clause 13.4(a), will not be withholding any information pursuant to Listing Rule 3.1A;
- (j) **(ASX announcements)** no material information contained in any document or announcement which any member of the Target Group has lodged, or filed with, or otherwise given to, ASIC or ASX (or which has been lodged, filed or given on behalf of a member of the Target Group) since the date 12 months prior to the date of this agreement, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the relevant document was lodged, filed with or given to ASIC or ASX (or, if applicable, such other date that the information in the relevant document was expressed to be given);
- (k) **(Target Due Diligence Materials)** the Target Due Diligence Materials and all other information provided to Bidder by Target in connection with this document and the transactions contemplated by this document were compiled and made available to the Bidder and its Representatives in good faith and the Target Due Diligence Materials are, to the best of the Target's knowledge:
- (i) true and accurate as at the date of this agreement;
- (ii) are not misleading or deceptive in any material respect when taken as a whole (including any omission; and
- (iii) do not omit any material information known that has not otherwise been Disclosed to the Bidder and which might reasonably be considered necessary for the Bidder to make an informed decision as to whether to enter into this agreement and proceed with the transaction contemplated by it;
- (l) **(Target factual information)** to the best of the Target's knowledge, all factual information that forms part of the Due Diligence Materials is actual in all material respects;
- (m) **(Reasonable assumptions)** to the extent any Target Due Diligence Materials include forward looking statements, to the best of the Target's knowledge, those forward looking statements are based on assumptions which Target believes, as at the date the information was provided, were determined with reasonable care and skill;
- (n) **(Financial reports)** the Target Group's financial statements as filed with ASX comply with all applicable statutory requirements and were prepared in accordance with the Corporations Act,

relevant accounting standards and all other applicable laws and regulations, and give a true and fair view of the financial position and assets and liabilities of the Target Group;

- (o) **(Insolvency)** no Insolvency Event has occurred in relation to the Target or its Related Bodies Corporate, nor has any regulatory action of any nature of which it is aware been taken or threatened to be taken that would prevent or restrict its ability to fulfil its obligations under this agreement;
- (p) **(Assets)** as at the date of this agreement, the Target Group owns, or has the right to use, all of the assets and real property, free and clear of any Encumbrances that are material for the conduct of the business of the Target Group, and will continue to do so upon and immediately following implementation of the Transaction;
- (q) **(Properties)** no Target Group member has any registered or beneficial interest in land other than its interest as lessee under the leases of 64 Great Eastern Highway, South Guildford WA, 4 Hyne Road, South Guildford WA and 203 Manzanita Lane, Elko, Nevada and the holding of 1,000,000 units in the 64 GEH Trust, and no Target Group member is party to any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property;
- (r) **(Licences, permits, authorisations and approvals)** the Target and each member of the Target Group has all material licences, permits, authorisations and approvals necessary for it to conduct its business in the manner in which it is conducted at the date of this agreement, and none of the Target or any member of the Target Group are in material breach of, or default under, any such licence, permit, authorisation or approval, nor has the Target or any of its Subsidiaries, received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit, authorisation or approval, such that any material breach or default would not have a material adverse effect on the implementation of the Transaction;
- (s) **(Employment)** the Target Due Diligence Materials Disclose details of the period of service, remuneration package, applicable allowances, redundancy and/or termination entitlements and accrued leave (including long service leave, annual leave and personal leave) as at the date specified therein for each Relevant Employee;
- (t) **(Award and enterprise agreement coverage)** as far as the Target is aware, all employees of the Target and each member of the Target Group are properly classified as being covered, or not covered, by a transitional Instrument, modern award, enterprise agreement or other industrial instrument;
- (u) **(Workplace compliance)** as far as the Target is aware, the Target and each member of the Target Group has:
  - (i) paid all amounts due to each employee and former employee, however arising, and including pursuant to any applicable transitional instrument, modern award, enterprise agreement or other industrial instrument; and
  - (ii) otherwise complied in all material respects with all of its obligations in relation to the employment of its employees, including all obligations arising under any transitional instrument, modern award, enterprise agreement or other industrial instrument, all obligations in relation to occupational health and safety and workers' compensation, all obligations under the *Fair Work Act 2009* (Cth), and other obligations that exist in relation to the Target's employees;
- (v) **(Contractors)** as far as the Target is aware, no individual providing services to the Target and each member of the Target Group as or on behalf of a contractor is an employee of the Target or member of the Target Group;
- (w) **(Superannuation)** the Target and each member of the Target Group has made all superannuation contributions required to avoid any liability for a superannuation guarantee charge under any applicable superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), and as far as the Target is aware has otherwise

complied in all material respects with all of its obligations under applicable superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth);

- (x) **(Intellectual Property Rights):**
- (i) the Target Group is the sole legal and beneficial owner of all right, title and interest in and to the Target IP;
  - (ii) the Target Group has not licensed, assigned or otherwise disposed of any right, title or interest in the Target IP and there is no obligation for the Target Group to grant a licence, assignment or other right in respect of any Target IP to any third party (including companies related to the Target Group, other than to Target or its Subsidiaries); and
  - (iii) the Target IP comprises all the Intellectual Property Rights necessary for each of Target and its Subsidiaries to operate its business as it has been operated in the 12 months before the date of this agreement;
- (y) **(Compliance with laws)** to the best of the Target's knowledge, the Target and each member of the Target Group have complied in all material respects with all applicable laws and regulations in each applicable jurisdiction in which the Target Group operates, and none of the Target or any member of the Target Group is aware of, or has received any notice of any actual or alleged material breach of any such laws or regulations by any member of the Target Group, such that any non-compliance, would not have a material adverse effect on the implementation of the Transaction;
- (z) **(Contracts)** all Material Contracts, in existence as at the date of this agreement have been Disclosed in the Target Due Diligence Materials;
- (aa) **(Compliance with contracts)** the Target and each member of the Target Group have complied in all material respects with each material contract to which it is a party, and none of the Target or any member of the Target Group is aware of any intention on the part of any counterparty to such a material contract to terminate or amend the terms of such material contract, such that any non-compliance, termination or amendment would not have a material adverse effect on the implementation of the Transaction;
- (bb) **(Rights under Material Contracts)** as at the date of this agreement, there are no Material Contracts which contain any change of control provisions, pre-emptive rights, mandatory sale or purchase obligations or similar rights that will be triggered by implementation of the Transaction (except as specifically Disclosed in the Target Due Diligence Materials);
- (cc) **(Onerous contractual obligations)** none of the Target or its Subsidiaries is party to any Material Contract that:
- (i) cannot be terminated within a 90day notice period; or
  - (ii) provides for any material take-or-pay, minimum contract volume or similar obligation on the part of the Target or any of its Subsidiaries;
- (dd) **(Third party relationships)** no Target Group member has been notified in writing by any third party that such third party intends to cease or alter the nature of its commercial or business dealings with the Target Group, where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole);
- (ee) **(Financing arrangements)** to the best of the Target's knowledge, no outstanding calls or demands have been made under, or in respect of, any existing financing or security arrangements to which the Target or any of its Subsidiaries is party to or by which any member of the Target Group (or any assets thereof) is bound;



- (ff) **(No breach of any financing arrangements)** to the best of the Target's knowledge, there is no existing or unremedied material breach of, nor any material default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under any existing financing or security arrangements to which the Target or any of its Subsidiaries is party to or by which any member of the Target Group (or any assets thereof) is bound, such that any material breach, default or other event would not have a material adverse effect on the implementation of the Transaction;
- (gg) **(No Encumbrances)** on the Implementation Date, there will be no Encumbrances over all or any of the Target Group's present assets or revenues;
- (hh) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence is subsisting or has occurred between the date of this agreement and the Implementation Date;
- (ii) **(No litigation)** as at the date of this agreement, neither the Target or any of its Subsidiaries are:
- (i) a party to any material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
  - (ii) the subject of any material ruling, judgement, order, declaration or decree by any Regulatory Authority,
- and as far as the Target is aware, there is no such material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation, dispute resolution, litigation, ruling, judgement, order, declaration or decree pending, threatened or anticipated, against the Target or its Subsidiaries;
- (jj) **(Insurance)** in respect of the insurances effected in respect of the Target Group:
- (i) the insurances provide usual insurance coverage for the business activities undertaken by the Target Group;
  - (ii) the Target Group has not carried out any business activities in respect of which it does not have usual insurance coverage;
  - (iii) each insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment; and
  - (iv) nothing has been done or omitted to be done that would make any insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy;
- (kk) **(Insurance claims)** as at the date of this agreement:
- (i) there are no outstanding material claims made by a Target Group member or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any Target Group member;
  - (ii) so far as the Target is aware, there are no material threatened or pending claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a material claim under any insurance;
  - (iii) the Target Group members have notified insurers of all material claims, facts, matters and circumstances as required by the notification provisions under each insurance;



- (iv) no Target Group member has made a material claim under any insurance that has been rejected or denied by the insurer; and
- (v) each Target Group member has in place all material insurances required by law or contract to be taken out by it, subject to excesses and deductibles;
- (II) **(No non-arm's length liabilities)** it does not owe any liabilities to any Target Shareholders or Third Parties that are outside the ordinary course of business or not on arm's length terms;
- (mm) **(Anti-bribery)** no member of the Target Group or any director, officer or employee of the Target Group, or to the knowledge of Target, any other person acting on behalf of any member of the Target Group, has:
- (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
  - (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
  - (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,
- and in each case, in violation of any applicable domestic or foreign anti-bribery laws in Australia or any other jurisdiction which is applicable to the Target Group; and
- (nn) **(Money laundering laws)** the operations of the Target Group are and have been conducted at all times in compliance with all applicable money laundering legislation of Australia or any other jurisdiction which is applicable to the Target Group, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Regulatory Authority in those jurisdictions, including, but not limited to, conducting customer identification and verification in a manner consistent with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument (No 1) 2007.

**Schedule 3 - Timetable**

Event	Date
Send Scheme Booklet to ASIC	Mid- late November 2021
First Court Date	Early-mid December 2021
Scheme Meeting	Mid-late January 2022
Second Court Date	Mid-late January 2022
Effective Date	Late January 2022
Record Date	Late January 2022
Implementation Date	Late January 2022

**Signed** as an agreement.

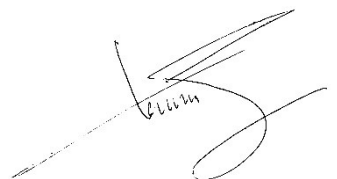
**Executed by Swick Mining Services Ltd ACN 112 917 905** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Kent Swick

Full name of director



Signature of company secretary/director

Andrew Simpson

Full name of company secretary/director

**Executed by DDH1 Limited ACN 636 677 088** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

**Executed by DDH1 FinCo Pty Ltd ACN 625 961 980** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

**Signed** as an agreement.

**Executed by Swick Mining Services Ltd ACN 112 917 905** in accordance with section 127 of the Corporations Act 2001 (Cth):

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

\_\_\_\_\_  
Full name of director

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

\_\_\_\_\_  
Full name of company secretary/director

**Executed by DDH1 Limited ACN 636 677 088** in accordance with section 127 of the Corporations Act 2001 (Cth):

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

Sy Van Dyk  
\_\_\_\_\_  
Full name of director

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

Ben MacKinnon  
\_\_\_\_\_  
Full name of company secretary/director

**Executed by DDH1 FinCo Pty Ltd ACN 625 961 980** in accordance with section 127 of the Corporations Act 2001 (Cth):

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

Sy Van Dyk  
\_\_\_\_\_  
Full name of director

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

Ben MacKinnon  
\_\_\_\_\_  
Full name of company secretary/director

**Annexure A - Scheme**

# Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Swick Mining Services Ltd

Target

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000  
GPO Box 9806  
Perth WA 6848  
Tel +61 8 9426 8000  
Fax +61 8 9481 3095  
**[www.claytonutz.com](http://www.claytonutz.com)**

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# Scheme of arrangement made under section 411 of the Corporations Act 2001 (Cth)

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## Date

## Parties

**Swick Mining Services Ltd ACN 112 917 905** of 64 Great Eastern Highway, South Guildford WA 6055 (**Target**)

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

## Background

- A. The Target is a public company limited by shares, incorporated in Australia and has been admitted to the official list of ASX.
- B. The Bidder is a public company limited by shares, incorporated in Australia and has been admitted to the official list of ASX.
- C. The Bidder Nominee (a wholly owned Subsidiary of the Bidder) is a proprietary company limited by shares and has been incorporated in Australia.
- D. The Target, the Bidder and the Bidder Nominee have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target, the Bidder and the Bidder Nominee has agreed to take certain steps to give effect to this Scheme.
- E. If this Scheme becomes Effective, the Bidder Nominee will acquire all of the Scheme Shares and the Target will enter the Bidder Nominee in the Target Share Register as the holder of the Scheme Shares.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Scheme, unless the contrary intention appears or the context requires otherwise:

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

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

**Bidder** means DDH1 Limited ACN 636 677 088 of 21 Baile Road, Canning Vale WA 6155.

**Bidder Nominee** means DDH1 FinCo Pty Ltd ACN 625 961 980 of 21 Baile Road, Canning Vale WA 6155.

**Bidder Share Register** means the register of members of the Bidder maintained by or on behalf of the Bidder in accordance with section 168(1) of the Corporations Act.

**Bidder Share Registry** means Computershare Investor Services Pty Limited ACN 078 279 277.

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

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

**Cash Out Shareholder** means a Scheme Shareholder (not being an Ineligible Overseas Shareholder) who, based on their holding of Scheme Shares on the date of the Scheme Booklet would, on implementation of this Scheme, be entitled to receive less than a Marketable Parcel of New Bidder Shares (assessed by reference to the last traded price of Bidder Shares on ASX on the trading day prior to the date of the Scheme Booklet) as Scheme Consideration.

**CHESS** means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlement Pty Limited ABN 49 008 504 532.

**Condition** means each condition to this Scheme set out in clause 2.1.

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

**Court** means the Supreme Court of Western Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**Deed Poll** means the deed poll dated [●] executed by the Bidder and Bidder Nominee in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

**Delivery Time** means 8:00 am on the Second Court Date.

**Effective** means, when used in relation to this Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

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

**Eligible Scheme Shareholder** means a Scheme Shareholder other than an Ineligible Overseas Shareholder or a Cash Out Shareholder.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means the date that is 6 months after the date of the Implementation Agreement or such other date agreed in writing between the Target and the Bidder.

**Implementation Agreement** means the Scheme Implementation Agreement dated [●] between the Target, the Bidder and the Bidder Nominee under which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.

**Implementation Date** means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

**Ineligible Overseas Shareholder** means a Scheme Shareholder whose address shown in the Target Share Register on the Record Date is a place outside Australia and its external territories and New Zealand, unless the Target determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Bidder Shares when the Scheme becomes Effective.

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

**Marketable Parcel** means a parcel of shares that are worth not less than \$500 in accordance with the ASX Operating Rules Procedures.

**New Bidder Shares** means fully paid ordinary shares in the capital of the Bidder to be provided to Scheme Shareholders under the Scheme.

**Record Date** means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

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

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

**Scheme Booklet** means the Scheme Booklet to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of the Implementation Agreement and to be despatched to Target Shareholders.

**Scheme Consideration** means the consideration to be provided to Scheme Shareholders for the transfer to the Bidder of their Scheme Shares comprising of the Share Consideration subject to the terms of this Scheme.

**Scheme Meeting** means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme.

**Scheme Share** means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder or the Bidder Nominee as at the Record Date.

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

**Scheme Transfer** means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

**Second Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Security Interest** has the meaning given in section 12 of the Personal Properties Securities Act 2009 (Cth).

**Share Consideration** means the New Bidder Shares which a Scheme Shareholder is entitled to receive as the Scheme Consideration being 0.2970 New Bidder Shares for each Scheme Share.

**Subsidiary** has the meaning given to it in the Corporations Act.

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Automic Pty Ltd ACN 152 260 814.

**Target Shareholder** means a person who is registered in the Target Share Register as a holder of Target Shares.

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

## 1.2 Interpretation

In this Scheme headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to 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 any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this Scheme;
- (g) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

## 1.3 Business Day

Except where otherwise expressly provided, where under this Scheme the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

## 2. Conditions precedent

### 2.1 Conditions

This Scheme is conditional on the satisfaction of each of the following Conditions, and will have no force or effect until each of the following Conditions is satisfied:

- (a) as at the Delivery Time, each of the conditions set out in clause 3.1 of the Implementation Agreement (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Implementation Agreement) has been satisfied or waived in accordance with the terms of the Implementation Agreement;
- (b) as at the Delivery Time, neither the Implementation Agreement nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act including any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and the Bidder (each acting reasonably);
- (d) such other Conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to the Target and the Bidder (each acting reasonably) have been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

### 2.2 Certificates in relation to Conditions

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived; and
- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived.

### 2.3 Conclusive evidence

The giving of a certificate by each of the Target and the Bidder in accordance with clause 2.2 will, in the absence of manifest error, be conclusive evidence of the matters referred to in the certificate.

### 2.4 Termination of Implementation Agreement

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms before the Delivery Time, the Target and the Bidder are each released from:

- (a) any further obligation to take steps to implement this Scheme; and
- (b) any liability with respect to this Scheme,

provided that the Bidder and the Target retain the rights they have against each other in respect of any prior breach of the Implementation Agreement.

---

### **3. Scheme**

#### **3.1 Effective Date of this Scheme**

Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

#### **3.2 End Date**

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, or such later date as the Target and the Bidder agree in writing.

---

### **4. Implementation of Scheme**

#### **4.1 Lodgement of Court Orders with ASIC**

If the Conditions (other than the Condition set out in clause 2.1(e)) are satisfied, the Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves this Scheme or such other Business Day as the Target and the Bidder agree in writing.

#### **4.2 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 4.3, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder Nominee without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney and agent for the Scheme Shareholders under this Scheme) by:
  - (i) the Target delivering to the Bidder Nominee a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 7.1 of this Scheme; and
  - (ii) the Bidder Nominee delivering to the Target a completed Scheme Transfer, duly executed by the Bidder Nominee, and the Bidder (or Bidder Nominee) attending to the stamping of the Scheme Transfer (if required); and
- (b) upon receipt of the Scheme Transfer in accordance with clause 4.2(a), but subject to the stamping of the Scheme Transfer (if required), the Target must enter, or procure the entry of, the name and address of the Bidder Nominee in the Target Share Register as the holder of all of the Scheme Shares.

#### **4.3 Provision of Scheme Consideration**

- (a) On the Implementation Date, the Bidder must:

- (i) issue to each Eligible Scheme Shareholder such number of New Bidder Shares as that Eligible Scheme Shareholder is entitled to as Share Consideration;
- (ii) issue to a nominee appointed by the Bidder in accordance with clause 4.9 such number of New Bidder Shares as are attributable to the Ineligible Overseas Shareholders or Cash Out Shareholders;
- (iii) procure the entry in the Bidder Share Register:
  - A. of the name and address of each Eligible Scheme Shareholder in respect of the New Bidder Shares issued to them; and
  - B. of the name and address of the nominee appointed by the Bidder in respect of those New Bidder Shares that would otherwise be issued to each Scheme Shareholder who is an Ineligible Overseas Shareholder or Cash Out Shareholder; and
- (iv) within 5 Business Days after the Implementation Date, the Bidder must send or procure the despatch to each Scheme Shareholder whose New Bidder Shares are held on the issuer sponsored subregister of the Bidder or the nominee appointed by the Bidder (as the case may be) by prepaid post to their address (as recorded in the Target Share Register as at the Record Date, except in the case of the nominee appointed by the Bidder) of uncertificated holding statements for New Bidder Shares issued to the Scheme Shareholder or the nominee appointed by the Bidder (as the case may be) in accordance with this Scheme.
- (b) This clause 4.3 does not apply to a Scheme Shareholder who does not have a Registered Address or where the Target and the Bidder believe that such Scheme Shareholder (other than Ineligible Overseas Shareholders) is not known at their Registered Address.

#### 4.4 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any monies required to be paid to the Scheme Shareholders will be payable to the joint holders;
- (b) any holding statements for New Bidder Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

#### 4.5 Unclaimed monies

- (a) The Bidder may cancel a cheque issued under this clause 4 if the cheque:
  - (i) is returned to the Bidder; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.



- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Bidder or Target (or the Bidder Share Registry or the Target Share Registry) (which request may not be made until that date which is 10 Business Days after the Implementation Date), the Bidder must reissue a cheque that was previously cancelled under this clause 4.5.
- (c) The *Unclaimed Money Act 1990* (WA) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of that Act).

#### 4.6 Orders of a court or Regulatory Authority

If written notice is given to the Target (or the Target Share Registry) or the Bidder (or the Bidder Share Registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by the Target in accordance with this clause 4, then the Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) requires issue to a third party of Bidder Shares in respect of Scheme Shares held by a particular Scheme Shareholder, which Bidder Shares would otherwise be required to be issued to that Scheme Shareholder by the Bidder in accordance with this clause 4, then the Bidder will be entitled to make that issue in accordance with that order or direction.

#### 4.7 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration comprising Bidder Shares is such that a fractional entitlement to a Bidder Share arises, then the entitlement of that Scheme Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole Bidder Share and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole Bidder Share.
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.7(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
  - (i) setting out their names and Registered Addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. The Bidder in complying with the other provisions of the Scheme relating to it in respect of the

Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

#### 4.8 Binding instruction or notifications

Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and the Target relating to Scheme Shares as at the Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from the Target) will, from the Record Date, be deemed (except to the extent determined otherwise by the Bidder in its sole discretion) to be a similarly binding instruction or notification to, and accepted by the Bidder, in respect of the Bidder Shares issued to the Scheme Shareholder until that instruction or notification is revoked or amended in writing addressed to the Bidder at the Bidder's share registry, provided that any such instructions or notifications accepted by the Bidder will apply to and in respect of the issue of Bidder Shares as the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of this Scheme.

#### 4.9 Ineligible Overseas Shareholders and Cash Out Shareholders

- (a) The Bidder will ensure that New Bidder Shares to which an Ineligible Overseas Shareholder or a Cash Out Shareholder would otherwise have been entitled will be issued to a nominee appointed by the Bidder (and approved by ASIC if required).
- (b) The Bidder will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
  - (i) sells on the financial market conducted by ASX all of the New Bidder Shares issued to the nominee pursuant to clause 4.9(a) in such manner, at such price and on such other terms as the nominee determines in good faith; and
  - (ii) remits to the Bidder the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Promptly after the last sale of New Bidder Shares in accordance with clause 4.9(b), the Bidder will pay to each Ineligible Overseas Shareholder and each Cash Out Shareholder the proportion of the net proceeds of sale received by the Bidder pursuant to clause 4.9(b)(ii) to which that Ineligible Overseas Shareholder or Cash Out Shareholder is entitled.
- (d) Neither the Bidder nor the Target gives any assurance as to the price that will be achieved for the sale of New Bidder Shares described in clause 4.9(b). The sale of the New Bidder Shares under this clause 4.9 will be at the risk of the Ineligible Overseas Shareholder or Cash Out Shareholder (as applicable).
- (e) The Bidder must appoint the nominee at least 14 calendar days prior to the Scheme Meeting.

#### 4.10 Status of New Bidder Shares

The Bidder covenants in favour of the Target (in its own right and on behalf of each Scheme Shareholder) that:

- (a) the New Bidder Shares issued as Scheme Consideration will, on their issue, rank equally in all respects with all other Bidder Shares on issue at the Effective Date, and the New Bidder Shares issued as Scheme Consideration will be entitled to participate in and receive any dividends, any distribution of capital and any other entitlements accruing in respect of Bidder Shares after the Effective Date;

- (b) it will use best endeavours to ensure that the New Bidder Shares issued as Scheme Consideration will be listed for quotation on the official list of ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the Business Day following the Implementation Date, on an ordinary (T+2) settlement basis; and
- (c) on issue, each New Bidder Share will be fully paid and, to the extent within the control of Bidder, free from any Encumbrance.

## **5. Dealings in Target Shares**

### **5.1 Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised by the Target provided that:

- (a) in the case of dealings of the type to be effected on CHESS, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Record Date at the place where the Target Share Register is kept,

and the Target will not accept for registration, or recognise for any purpose (except a transfer to the Bidder Nominee pursuant to this Scheme and any subsequent transfer by the Bidder Nominee or its successors in title), any transmission application or transfer in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

### **5.2 Target Share Register**

The Target will, until the Scheme Consideration has been paid and the Bidder Nominee has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 5 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

### **5.3 Information to be made available to the Bidder**

The Target must procure that as soon as practicable following the Record Date, details of the names, Registered Addresses and holdings of Scheme Shares of every Scheme Shareholder shown in the Target Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

### **5.4 Effect of share certificates and holding statements**

As from the Record Date (and other than for the Bidder Nominee following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and, subject to provision of the Scheme Consideration by the Bidder and registration of the transfer to the Bidder Nominee of the Scheme Shares contemplated by clauses 4.2 and 4.3, each entry on the Target Share Register (other than for the Bidder Nominee) at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

## 5.5 No disposals after Record Date

If this Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date and any such disposal will be void and of no legal effect whatsoever.

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## 6. Suspension and termination of quotation

- (a) The Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of trading on the Effective Date.
- (b) The Target must apply to ASX for:
  - (i) termination of official quotation of the Target Shares on ASX; and
  - (ii) the removal of the Target from the official list of ASX,
 with effect from the close of business on the Business Day immediately following the Implementation Date.

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## 7. General Scheme provisions

### 7.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target (and each of its directors and officers, jointly and severally) as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the Scheme Transfer to be delivered under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 7.3; and
- (b) enforcing the Deed Poll against the Bidder or the Bidder Nominee,

and the Target accepts such appointment. The Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

### 7.2 Enforcement of Deed Poll

The Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder and the Bidder Nominee (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

### 7.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to the Target, the Bidder and the Bidder Nominee doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and
- (b) acknowledges that this Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).

## 7.4 Scheme Shareholder's agreements and warranties

Each Scheme Shareholder:

- (a) to whom New Bidder Shares are to be issued in accordance with this Scheme:
  - (i) agrees to become a member of the Bidder and to have their name entered in the Bidder Share Register; and
  - (ii) accepts the Bidder Shares issued under this Scheme on the terms and conditions of the constitution of the Bidder and agrees to be bound by the constitution of the Bidder as in force from time to time in respect of the Bidder Shares,

without the need for any further act by a Scheme Shareholder;
- (b) irrevocably agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (c) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (d) irrevocably agrees to, on the direction of the Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
- (e) is deemed to have warranted to the Bidder and the Bidder Nominee and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder and the Bidder Nominee that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder Nominee, be fully paid and free from all security interests including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder Nominee under this Scheme.

## 7.5 Title to Scheme Shares and transfer free from Encumbrance

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 4.3, the Bidder Nominee will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder Nominee in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder Nominee, will, at the time of transfer to the Bidder Nominee, vest in the Bidder Nominee free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

## 7.6 Appointment of the Bidder Nominee as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 4.3 of this Scheme, on and from the Implementation Date until the Target registers the Bidder Nominee as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) irrevocably appoints the Bidder Nominee and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Schemes Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 7.6(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder Nominee reasonably directs.

## **7.7 Consent to alterations**

If the Court proposes to approve this Scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to this Scheme which the Court thinks fit to impose.

## **7.8 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Target's registered office or at the Target Share Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## **7.9 Inconsistencies**

This Scheme binds the Target and all Scheme Shareholders (including Scheme Shareholders who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme), and to the extent of any inconsistency and permitted by law, overrides the Target constitution.

## **7.10 Further assurance**

The Target will execute all documents and do all acts and things (on its own behalf and on behalf of any other person) as may be necessary or expedient for the implementation of, and performance of its obligations under, this Scheme.

## **7.11 No liability when acting in good faith**

None of the Target, the Bidder and the Bidder Nominee, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

## **7.12 Stamp duties**

The Bidder (or Bidder Nominee) must pay or procure the payment of all stamp duties and other duties together with any related fees, fines, penalties, interest or statutory charges, and similar taxes in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll.

## **7.13 Governing law and jurisdiction**

- (a) This Scheme is governed by the law applying in Western Australia.

- (b) Each party irrevocably:
- (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.13(b)(i).



**Annexure B - Deed Poll**

For personal use only

# Deed Poll

DDH1 Limited

Bidder

DDH1 FinCo Pty Ltd

Bidder Nominee

In favour of each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000  
GPO Box 9806  
Perth WA 6848  
Tel +61 8 9426 8000  
Fax +61 8 9481 3095  
**[www.claytonutz.com](http://www.claytonutz.com)**

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## Deed Poll

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### Date

**Parties**                    **DDH1 Limited** ACN 636 677 088 of 21 Baile Road, Canning Vale WA 6155 (**Bidder**)

**DDH1 FinCo Pty Ltd** ACN 625 961 980 of 21 Baile Road, Canning Vale WA 6155  
(**Bidder Nominee**)

**In favour of**            Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date (**Scheme Shareholders**)

### Background

- A.            The Target, the Bidder and the Bidder Nominee have entered into the Implementation Agreement.
- B.            The Target has agreed in the Implementation Agreement to propose the Scheme, the effect of which will be that the Bidder Nominee will acquire all of the Scheme Shares from the Scheme Shareholders, subject to the satisfaction of certain conditions.
- C.            In accordance with clause 4.2(j) of the Implementation Agreement, the Bidder and the Bidder Nominee are entering into this deed poll.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this deed poll:

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

**Implementation Agreement** means the scheme implementation agreement dated [●] between the Target, the Bidder and the Bidder Nominee pursuant to which, amongst other things, the Target has agreed to propose the Scheme, and each of the Target, the Bidder and the Bidder Nominee has agreed to take certain steps to give effect to the Scheme.

**Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, substantially in the form of Annexure A to the Implementation Agreement, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Target and the Bidder in writing.

**Target** means Swick Mining Services Ltd ACN 112 917 905 of 64 Great Eastern Highway, South Guilford WA 6055.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

## 1.2 Interpretation

In this deed poll headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to 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 any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this deed poll;
- (g) a reference to a document (including this deed poll) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this deed poll;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this deed poll or any clause in this deed poll must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

## 1.3 Nature of deed poll

Each of the Bidder and the Bidder Nominee acknowledge and agree that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints the Target and each of its directors and officers (jointly and each of them severally) as its agent and attorney to enforce this deed poll against the Bidder and/or the Bidder Nominee.

## 2. Conditions

### 2.1 Conditions Precedent

The obligations of the Bidder and the Bidder Nominee under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

The obligations of the Bidder and the Bidder Nominee under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date,

unless the Target and the Bidder otherwise agree in accordance with the Implementation Agreement.

### 2.3 Consequences of termination

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

- (a) each of the Bidder and the Bidder Nominee is released from its obligations to further perform this deed poll except those obligations under clause 7.4 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights it has against the Bidder and/or the Bidder Nominee in respect of any breach of this deed poll which occurs before it was terminated.

## 3. Scheme obligations

### 3.1 Scheme Consideration

Subject to clause 2:

- (a) the Bidder undertakes in favour of each Scheme Shareholder to, on the Implementation Date, issue to each Eligible Scheme Shareholder such number of New Bidder Shares as that Eligible Scheme Shareholder is entitled to as Scheme Consideration; and
- (b) the Bidder and the Bidder Nominee each undertake in favour of each Scheme Shareholder to undertake all other actions attributed to it under, and otherwise comply with, the Scheme, as if named as a party to the Scheme, subject to and in accordance with the terms of the Scheme, including to pay the Scheme Consideration to each Scheme Shareholder in accordance with clause 4.3 of the Scheme and to comply with clause 4.9 of the Scheme.

### 3.2 Official quotation of New Bidder Shares

The Bidder will seek confirmation from ASX that the New Bidder Shares will be listed for quotation on the official list of ASX, with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the Business Day following the Implementation Date, on an ordinary (T+2) settlement basis.

## 4. Representations and warranties

Each of the Bidder and the Bidder Nominee represent and warrant that:

- (a) **(Status)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Power)** it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(Authorisation)** it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(Binding)** this deed poll is valid and binding on it and is enforceable against it in accordance with its terms;
- (e) **(Transaction permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll does not and will not violate in any respect:
  - (i) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound; or
  - (ii) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Implementation Agreement) or any material term or provision of any of its material agreements; and
- (f) **(Solvency)** it is solvent and no resolution has been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

## 5. Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

- (a) the Bidder and the Bidder Nominee fully performing their respective obligations under this deed poll; or
- (b) the termination of this deed poll under clause 2.2.

## 6. Notices

### 6.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 6.4 or to any other address as the recipient may have notified the sender in writing; and
- (c) be signed by the party or by an authorised officer of the sender.



## 6.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid express post; or
- (d) sent by electronic mail to the party's electronic mail address.

## 6.3 Time

If a notice is sent or delivered in the manner provided in clause 6.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
  - (i) in Australia to an Australian address, the third Business Day after posting; or
  - (ii) in any other case, on the tenth Business Day after posting; or
- (c) electronic mail, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered, two hours after the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

## 6.4 Initial details

The addresses and numbers for service are initially:

### **Bidder or Bidder Nominee:**

Address: 21 Baile Road, Canning Vale, 6155

Electronic Mail: Company.Secretary@ddh1.com.au

Attention: Company Secretary

with a copy (for information purposes only) in each case to:

Email: Ben.mackinnon@ddh1.com.au

## 6.5 Changes

A party may from time to time change its address or numbers for service by notice to each other party.

## **7. General**

### **7.1 Assignment**

The rights and obligations of the Bidder, the Bidder Nominee and each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

### **7.2 Cumulative rights**

The rights, powers and remedies in connection with this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

### **7.3 Further action**

Each of the Bidder and the Bidder Nominee will, at its own expense, promptly do all things and execute and deliver all further documents required by law to give effect to this deed poll and the transactions contemplated by it.

### **7.4 Stamp duties**

The Bidder (or the Bidder Nominee) must pay or procure the payment of all stamp duties and other duties together with any related fees, fines, penalties, interest or statutory charges, and similar taxes in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll.

### **7.5 Variation**

A provision of this deed poll may not be varied unless:

- (a) before the First Court Date, the variation is agreed to in writing by the Target, the Bidder and the Bidder Nominee; or
- (b) on or after the First Court Date, the variation is agreed to in writing by the Target, the Bidder and the Bidder Nominee and the Court indicates that the variation would not preclude approval of the Scheme,

in which event the Bidder and the Bidder Nominee will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such variation.

### **7.6 Waiver**

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the person granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure or delay in exercise, partial exercise, or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any person will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

- (c) A person is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A person may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.
- (e) This clause 7.6 may not itself be waived except in writing.

## **7.7 Merger**

If the liability of a party to pay money under this deed becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this deed and that fixed by or payable under that deed, judgment, order or other thing.

## **7.8 Moratorium legislation**

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this deed is excluded to the extent permitted by law.

## **7.9 Costs**

Each party is responsible for all its own costs incurred in the negotiation and performance of this deed including legal costs.

## **7.10 Time**

- (a) Time is of the essence of this deed poll.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this deed poll.
- (c) An agreement to vary a time requirement must be in writing.

## **7.11 Counterparts**

This deed may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this deed may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf (portable document format) copy of,  
the executed counterpart to that other party.

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## **8. Governing law and jurisdiction**

- (a) This deed poll is governed by the law applying in Western Australia.
- (b) The Bidder and the Bidder Nominee each irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings in connection with this deed poll.

- (c) The Bidder and the Bidder Nominee each waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8(b).

**Executed** as a deed poll.

**Executed** by **DDH1 Limited** in accordance with section 127 of the Corporations Act 2001 (Cth):

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

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

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

**Executed** by **DDH1 FinCo Pty Ltd ACN 625 961 980** in accordance with section 127 of the Corporations Act 2001 (Cth):

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

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

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director