

HEEMSKIRK

Announcement



13 February 2017

Taurus takeover proposal recommended

KEY POINTS

- ▶ **Directors recommend Taurus' takeover proposal and Shareholders elect the 7.5 cents per share Cash Alternative, in the absence of a superior offer and provided that the Independent Expert determines the Taurus Proposal is fair and reasonable.**
- ▶ **Takeover Implementation Agreement executed with Taurus.**
- ▶ **C\$10 million bridge finance facility agreed with Taurus.**

Further to the ASX announcement on 22 December 2016, the Board of Heemskirk Consolidated Limited (ASX: HSK), ("Heemskirk" or the "Company") has finalised its review of the conditional proposal from Taurus Resources No 2 BV ("Taurus") to acquire 100% of the issued capital of the Company (the "Proposal").

The Proposal

Under the Proposal, Heemskirk Shareholders may elect to take consideration for their current Heemskirk shares in the form of:

- Cash: A\$0.075 per Heemskirk share ("Cash Alternative"); or
- Scrip: on a one-for-one basis in the Bidder ("Scrip Alternative").

The bidder is Northern Silica Corporation ("Bidder") – a new private limited company in Canada that is a subsidiary of Taurus. The Bidder has been incorporated for the sole purpose of holding Heemskirk shares and issuing new scrip to those Shareholders who elect to take the Scrip Alternative.

Directors' Recommendation

Each Director of Heemskirk recommends that Shareholders accept the Proposal and elect the Cash Alternative, in the absence of a superior offer and provided that the Independent Expert determines the Proposal is fair and reasonable.

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HEEMSKIRK
CONSOLIDATED



Summary reasons for the Directors' Recommendation

Shareholders should consider their own circumstances and review all documentation before making any decision about the Taurus Proposal and electing to take either the Cash or Scrip Alternative. More details will be available in the Bidder's Statement and Target's Statement.

The Directors recommend the Cash Alternative for the following key reasons:

1. **Material premium** – the Cash Alternative is at a premium to Heemskirk share prices prior to announcement of Taurus' proposal on 22 December 2016:
 - a. 50% to the Heemskirk closing share price on 21 December 2016;
 - b. 18% to the Heemskirk 1 month volume weighted average price ("VWAP") to 21 December 2016; and
 - c. 60% to the Heemskirk 12 month VWAP to 21 December 2016.
2. **Certainty of value** – the Cash Alternative provides certainty for Heemskirk Shareholders.
3. **Crystallises value for Stage 1 of the Moberly Project** – the Cash Alternative compensates Shareholders for the current status of the Project; noting it remains under construction and has commissioning and operating risks.
4. **Recognises some early value for the expansion potential of the Moberly Project** – the Cash Alternative incorporates some value for the proposed expansion, adjusting for its risk and capital required to plan, advance and then fund any expansion.
5. **Need for additional working capital** – Taurus has agreed to underwrite up to C\$10 million to be made available contingent upon its offer being declared free of conditions.

The Directors are not able to form a recommendation about the Scrip Alternative. The Board understands the Bidder's intentions are to privatise the Company, redomicile it to Canada (where the Project is located) and reduce corporate overheads appropriately. This means the value of the Scrip Alternative is less certain than the Cash Alternative and may vary significantly based on a number of factors; including:

- The future performance of the Project, including the expansion case;
- Capital requirements of the Bidder, including the refinancing of the Bridge Facility and funding of the expansion case;
- The private company structure and domicile of the Bidder in Canada; and
- Associated taxation matters.



Bridge Facility

As announced on 31 January 2017, the Company believes that additional short-term funding is likely to be required during project commissioning, early production and for the commencement of studies for Stage 2 of the Moberly Project.

Taurus has offered a funding solution via an underwritten working capital bridging facility (“Bridge Facility”) to be available to the Company (via its Canadian subsidiary, HCA Mountain Minerals (Moberly) Limited) on the following key terms:

- Up to C\$10 million, able to be drawn in C\$2.5 million minimum tranches.
- Maturity date of 31 March 2018.
- Bullet repayment at the Maturity Date, with no penalty for early repayment.
- Funds to be used by the Company for funding working capital requirements and existing Taurus debt servicing requirements.
- Unsecured facility.
- Interest rate of 12.5% p.a. on drawn funds, to be repaid in Bidder shares (not cash).
- Fees payable to Taurus in Bidder shares (not cash) comprising:
 - 2% arrangement fee on the total facility size; and
 - 2% p.a. commitment line fee on undrawn funds.
- The Bridge Facility is available for draw down once the Bidder has declared its offer free of all conditions.
- Repayment of the Bridge Facility is currently intended to be via a new equity issue by the Bidder following completion of the offer on the following key terms:
 - Issue price of C\$0.075 per share; and
 - All Bidder shareholders may participate in the equity raising on a pro-rata basis to their shareholdings in the Bidder.

The Bridge Facility is subject to certain conditions precedent, representations and warranties; including legal documentation and customary provisions for a facility of this nature. The Directors are not aware of any reason why the conditions precedent are not presently able to be satisfied.



Current funding arrangements

Taurus has agreed new arrangements with Heemskirk to enable the Company to draw down on the full amount of the existing US\$25m debt funding package.

Independent Expert

The Company has appointed an Independent Expert to assess the Proposal, BDO Corporate Finance (East Coast) Pty Ltd (“BDO”). In determining the value of the Company, BDO will rely on the findings of an Independent Technical Expert, CSA Global Pty Ltd (“CSA Global”), which has been appointed to review the Moberly Project. The BDO and CSA Global reports will be included in the Target’s Statement to be issued by the Company.

Takeover Implementation Agreement

Heemskirk has entered into a Takeover Implementation Agreement with Taurus, as attached to this announcement. This document governs certain aspects of the relationship between the Company and the Bidder and includes important arrangements relating to:

- Exclusivity restrictions for the Company;
- The opportunity for the Bidder to match any competing proposal made for Heemskirk; and
- A mutual break fee of A\$450,000 for the reimbursement of costs; payable to Heemskirk or the Bidder in certain circumstances.

The Board encourages Shareholders to read the Takeover Implementation Agreement and notes that it is subject to certain conditions; including:

- Minimum acceptance such that the Bidder achieves a relevant interest in at least 90% of the issued capital of the Company;
- Regulatory approvals, including from the Foreign Investment Review Board;
- No material adverse effect on the Company; and
- Other customary arrangements for a Proposal of this nature.



Next steps

Heemskirk understands that the Bidder expects to formalise the Proposal as an off-market takeover offer with the release of its Bidder's Statement in early March 2017, which must be open for acceptance by Heemskirk Shareholders for a minimum of one month.

Heemskirk expects to release a Target's Statement (including the Independent Expert's Report) in March 2017. The Directors encourage you to consider the Target's Statement thoroughly and obtain advice from your legal, financial or other professional adviser if you are in any doubt as to what you should do.

Company advisers

The Company has appointed Lion Capital Advisory as financial adviser and GrilloHiggins as legal adviser to assist it in evaluating the Proposal.

For further information, please contact:

Craig Jensz
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+61 400 634 979 or craig.jensz@lioncapital.com.au

Takeover implementation agreement

Dated *13 February* 2017

Heemskirk Consolidated Limited (ACN 106 720 138) (the “**Company**”)

Northern Silica Corporation (the “**Bidder**”)

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Takeover implementation agreement

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Takeover implementation agreement

Details

Parties		
Company	Name	Heemskirk Consolidated Limited
	ACN	106 720 138
	Formed in	Australia
	Address	Level 17, 303 Collins Street, Melbourne, VIC 3000
	Telephone	+61 3 9614 0666
Bidder	Name	Northern Silica Corporation
	Formed in	Canada
	Address	C/o Taurus Funds Management Pty Limited Suite 4101, Level 41 Gateway, 1 Macquarie Place, Sydney, NSW, 2000
	Telephone	+61 2 8314 5503
Governing law	New South Wales	
Business Day place	Sydney	
Recitals	A	The Bidder is proposing to acquire all of the Company Shares by way of a Takeover Bid.
	B	The Company and the Bidder have agreed to co-operate with each other in relation to the Takeover Bid on the terms of this agreement.

1 Definitions and interpretation

The following words have these meanings in this agreement unless the contrary intention appears.

Advisers means, in relation to an entity, its legal, financial and other expert advisers.

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

Announcement means the announcement substantially in the form of Schedule 4.

Announcement Date means the date the Takeover Bid is announced in accordance with clause 10.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited or the Australian Securities Exchange, as appropriate.

Authorised Officer means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this agreement.

Bidder Group means Bidder and its Related Bodies Corporate.

Bidder Payment means the amount equal to \$450,000.

Bidder Share means a fully paid ordinary share in the Bidder.

Bidder's Statement means the bidder's statement to be issued by the Bidder in respect of the Takeover Bid.

Business Day means a business day as defined in the Listing Rules.

Cash Consideration has the meaning given in clause 3.2.

Competing Proposal means any proposal, agreement, arrangement, or transaction which, if entered into or completed, would mean that a third party (either alone or with any associate thereof) would:

- (a) for any person who does not hold 20% or more of Company Shares on the date of this agreement, directly or indirectly acquire a relevant interest in, or have a right to acquire a legal, beneficial or economic interest in, or control of, 20% or more of the Company Shares;
- (b) for any person who holds a greater than 20% interest in Company Shares on the date of this agreement, directly or indirectly acquire a relevant interest in, or have a right to acquire a legal, beneficial or economic interest in, or control of, 50% or more of the Company Shares;

- (c) acquire Control of any member of the Company Group;
- (d) otherwise directly or indirectly acquire or merge or be stapled with any member of the Company Group; and/or
- (e) directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, all or substantially all of the business or assets of any member of the Company Group,

whether by way of a takeover bid, scheme, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets or liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

Company Board means the board of directors of Company and a **Company Director** means any director of the Company.

Company Group means Company and its Related Bodies Corporate.

Company Payment means an amount equal to \$450,000.

Company Share means a share in the Company as set out in Schedule 2 and **Company Shares** means all of them.

Company Shareholder means a holder of one or more Company Shares.

Conditions means the conditions set out in Schedule 1.

Control has the meaning given in section 50AA of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cwlth).

Details means the section of this agreement headed "Details".

Employee Securities means any entitlement of a person to be issued Employee Shares under the Employee Share Plan (upon the satisfaction of any vesting condition) and the Employee Rights to Acquire.

Employee Shares means the unvested shares held by the trustee of the Employee Share Plan as set out in Schedule 2.

Employee Share Plan means the equity incentive plan as adopted by, and amended from time to time, by the Company Group.

Employee Rights to Acquire means the vested and unvested rights to acquire shares in the Company granted to employees of the Company Group as set out in Schedule 2.

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

End Date means the earliest of:

- (a) date of termination of this agreement in accordance with its terms; and

(b) 30 July 2017.

Exclusivity Period means the period commencing on the date of this agreement and ending on the End Date.

Facility Agreement means the US\$40,000,000 Secured Facility Agreement dated 15 July 2015 between HCA Mountain Minerals (Moberly) Limited (a company incorporated in British Columbia), the entities listed in Part I of Schedule 1 as original guarantors, Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 L.P and Taurus Funds Management Pty Limited as trustee for Taurus Resources No.2 Trust, as amended and novated to Taurus Resources No. 2 B.V. by the agreement entitled "HCA Mountain Minerals (Moberly) US\$40m Secured Facility Agreement – Novation and Amendment Deed 1") dated 10 February 2016.

Foreign Company Shareholder means a Company Shareholder who elects to receive the Share Consideration and:

- (a) who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories; or
- (b) whose address shown in the Register is a place outside Australia and its external territories or who is acting on behalf of such a person,

unless the Bidder determines that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Company Shareholder with Bidder Shares on completion of the Offer; and
- (b) it is lawful for that Company Shareholder to participate in the Offer by the law of the relevant place outside Australia and its external territories.

Group means the Company Group or the Bidder Group, as applicable.

GST means a goods and services or similar tax imposed in Australia.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

Input Tax Credit has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in

each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Listing Rules means the Listing Rules of ASX.

Lodgement Date means the date the Bidder lodges the Bidder's Statement with ASIC.

Marketable Securities means any securities held by the Company in any company listed on any prescribed stock exchange.

New Bidder Shares means the Bidder Shares to be issued as Share Consideration.

Offer means each offer to acquire Company Shares to be made by the Bidder to each Company Shareholder under the Takeover Bid on terms consistent with this agreement.

Offer Date has the meaning given in Schedule 5 or such other date agreed between the Bidder and the Company.

Offer Period means the period during which the Offer is open for acceptance.

Officers means, in relation to an entity, its directors, officers, partners and employees.

Register means the share and option register of Company (as appropriate) and **Registry** has a corresponding meaning.

Register Date means the date set by Bidder pursuant to section 633(2) of the Corporations Act.

Regulatory Approval means:

- (a) any consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority, ruling or exemption from, by or with a Regulatory Authority; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action,

as may be necessary to enable a party to fulfill its obligations under this agreement.

Regulatory Authority includes:

- (a) ASX and ASIC;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Related Bodies Corporate has the meaning given in the Corporations Act.

Representatives of a party includes:

- (a) a Related Bodies Corporate of the party; and
- (b) Officers, Advisers and employees of the party or any of its Related Bodies Corporate.

Share Consideration has the meaning given in clause 3.2.

Superior Proposal means a bona fide Competing Proposal which the relevant board of the member of the Company Group, acting in good faith, and after receiving written legal advice from its legal advisers and written advice from its financial advisers, determines:

- (a) is reasonably capable of being completed taking into account all aspects of the Competing Proposal including any timing considerations, any conditions precedent, the identity of the proponent and ability to finance; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Company Shareholders (as a whole) than any transaction then proposed by the Bidder or any of their related bodies corporate, taking into account all terms and conditions of the Competing Proposal.

Takeover Bid means the off-market takeover bid by the Bidder for the Company Shares to be implemented in accordance with Chapter 6 of the Corporations Act.

Takeover Documents means the Bidder's Statement and the Target's Statement.

Target's Statement means the Target's Statement to be issued by the Company in respect of the Takeover Bid.

Taurus means Taurus Resources No. 2 BV.

Tax means any tax, levy, impost, charge or duty (including stamp and transaction duties) that is assessed, levied, imposed or collected by any imposed by any Regulatory Authority together with any related interest, penalties, fines and expenses in connection with them.

Timetable means the timetable set out in Schedule 5, or such other indicative timetable as the Company and the Bidder agree in writing.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(Calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) **(time of day)** time is a reference to Sydney, New South Wales time.

1.3 **Next day**

If an act under this agreement to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day.

1.4 **Next Business Day**

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.5 **Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

2 **Co-operation**

2.1 **General obligations**

The Company and the Bidder must each use all reasonable endeavours, and must procure that its Representatives work in good faith and in a timely and co-operative fashion with the other party, in order to implement the Takeover Bid.

2.2 **Access to information**

To the extent reasonably required to implement the Takeover Bid, the Company must provide the Bidder and its Representatives with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them prior to the earlier of the end of the Offer Period and the date this agreement is terminated.

2.3 **Implementation obligations of the Company**

The Company must:

- (a) provide all necessary information about the Register to the Bidder which the Bidder requires in order to assist it to solicit acceptances under the Takeover Bid;
- (b) direct the Registry to promptly provide any information that the Bidder reasonably requests in relation to the Register (including any sub-register) and, where requested by the Bidder, the Company must procure such information to be provided to the Bidder in such electronic form as is reasonably requested by the Bidder; and
- (c) promptly exercise its powers under section 672A of the Corporations Act if requested to do so by the Bidder (acting reasonably) subject to the Bidder meeting 50% of the costs of such services.

3 **The Offer**

3.1 **Offer by the Bidder**

The Bidder must, by no later than the Offer Date make the Offer to each Company Shareholders in respect of all Company Shares held by them on the

terms of this agreement and otherwise in accordance with all applicable provisions of the Corporations Act.

3.2 Consideration

The Bidder will offer the Company Shareholders the option to elect one of the following forms of consideration for each fully paid Company Share held by them on the Register Date:

- (a) \$0.075 cash (the "**Cash Consideration**"); or
- (b) 1 Bidder Share (the "**Share Consideration**").

The Cash Consideration and Share Consideration offered to holders of party paid Company Shares will be adjusted to reflect the paid up proportion of the Company Shares held by them on the date that their Company Shares are acquired.

3.3 Foreign Company Shareholders

Unless:

- (a) the Bidder is satisfied that the laws of a Foreign Company Shareholder's country of residence (as shown in the Register) permit the issue of New Bidder Shares to the Foreign Company Shareholder (either unconditionally or after compliance with conditions which Bidder regards as acceptable and not unduly onerous and not unduly impracticable); or
- (b) ASIC relief permits otherwise,

the Bidder will issue the New Bidder Shares to which a Foreign Company Shareholder would otherwise become entitled to a nominee appointed by the Bidder who will sell those New Bidder Shares and pay to that Foreign Company Shareholder the proceeds received, after deducting any applicable brokerage, taxes and charges in accordance with the Offer.

3.4 Conditions of the Offer

- (a) The Offer and any contract which results from its acceptance will be subject to the Conditions.
- (b) Each party must use all reasonable endeavours to satisfy the Conditions as soon as practicable after the date of this agreement.
- (c) The Company must use all reasonable endeavours to ensure that the Conditions in paragraphs (f) ("*no material acquisitions, disposals or new commitments*") and (j) ("*prescribed occurrences*") of Schedule 1 are not breached prior to the end of the Offer Period, provided that nothing in this clause 3.4(c) requires the Company Board to take any action which would result in a breach of a fiduciary duty.
- (d) The Bidder may waive the satisfaction of the Conditions in its sole discretion.

3.5 Offer Period

The parties intend that the Offer Period will be one month, but acknowledge and agree that the Offer Period may be extended by the Bidder at its discretion or automatically, in each case in accordance with the Corporations Act.

4 Other securities

4.1 Dealing with Securities issued under Employee Share Plan

Prior to expiry of the Bid Period and subject to the Offer being unconditional (save for the Condition in paragraphs (m) of Schedule 1), the Company will use its reasonable endeavours to work in conjunction with the Bidder to negotiate with the relevant parties to ensure that any entitlement to shares under the Employee Securities are cancelled for nil consideration, or for such other consideration agreed with the Bidder in good faith.

4.2 Extension of Takeover Bid

The Takeover Bid will extend to all Company Shares that are issued during the Offer Period due to conversion of any other Company securities or vesting of the Employee Securities that exist at the date to be set by Bidder under section 633(2) of the Corporations Act.

5 Recommendation and documentation

5.1 Bidder's obligations to prepare documentation

- (a) The Bidder will prepare the Bidder's Statement and an acceptance form for the Offer, in each case consistent with clauses 3.2 to 3.5. The Bidder's Statement must not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and must comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC.
- (b) The Bidder agrees to do, and will procure its Officers do, such things as are reasonably necessary to prepare the Bidder's Statement, its lodgement with ASIC and despatch to Company Shareholders in accordance with the Timetable (noting that all dates after lodgement of the Target's Statement are indicative only), subject to the Company granting any necessary consents and ASIC granting any necessary modifications.

5.2 Company's obligations to prepare documentation

- (a) The Company must prepare the Target's Statement in response to the Offer in accordance with the Corporations Act. The Target's Statement must not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC.
- (b) The Company agrees to do, and will procure its Officers do, such things as are reasonably necessary to prepare the Target's Statement, its lodgement with ASIC and despatch to Company Shareholders in accordance with the Timetable.

5.3 Provision of Information

Each party agrees that it will provide to the other such information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) as is reasonably required by the other party in order to enable the other party to fulfil its obligations under this agreement, including, but not limited to, the preparation of the Bidder's Statement and the Target's Statement.

5.4 Directors' recommendations

(a) Company Board recommendation

The Company must use its reasonable endeavours to procure in the Target's Statement and any other public statements made by the Company in relation to the Takeover Bid a statement by the Company Board to the effect that, subject to clause 5.4(b), the Company Directors unanimously recommend that Company Shareholders accept the Cash Consideration component of the Offer in the absence of a Superior Proposal and subject to the independent expert concluding in the independent expert's report that the Offer is fair and reasonable.

(b) The Bidder acknowledges that each of the Company Directors may publicly (or otherwise) change, withdraw or modify its, his or her recommendation to accept the Cash Consideration component of the Offer if:

- (i) the independent expert provides a report to the Company (including either in the independent expert's report or to any update, addendum or variation to it) that concludes that the Offer is not fair or reasonable; or
- (ii) the Company has received, other than as a breach of clause 6, a Superior Proposal.

For the purposes of this clause, customary qualifications and explanations contained in the Target's Statement in relation to a recommendation to accept the Cash Consideration component of the Offer to the effect that the recommendation is made in the absence of a Superior Proposal will not be regarded as a failure to make or withdraw the making of a recommendation in favour of the Offer.

(c) Without limiting the operation of the preceding provisions of this clause 5.4, if circumstances arise (including the receipt or expected receipt of an unfavourable report from the independent expert) which may lead to any one or more Company Director changing, withdrawing or modifying his or her recommendation to accept the Cash Consideration component of the Offer (other than such circumstances as provided for in clause 6.2 or clause 6.3 which shall be regulated by those clauses), the Company must:

- (i) promptly notify the Bidder of this fact; and
- (ii) consult with the Bidder in good faith to determine whether there are any steps that can be taken to avoid such a change, withdrawal or modification (as applicable).

5.5 Sharing of Bidder's Statement and Target's Statement

(a) The Bidder agrees that it will provide a draft of its Bidder's Statement to the Company and the Company agrees that it will provide a draft of its Target's Statement to the Bidder as soon as reasonably practicable and

in any event not less than 5 Business Days before the statement is due to be dispatched for printing. Each party agrees to consider in good faith all reasonable and timely comments received from the other and its Advisers and make such changes to its statement as are reasonably required by the other.

- (b) At least 5 Business Days before the Target's Statement is due to be despatched, the Company will make available to the Bidder the factual accuracy draft of the independent expert's report (excluding those sections containing the independent expert's opinion, conclusions or valuation ranges) and will consult with the Bidder in relation to the content of that draft and (acting reasonably and in good faith) take into account, for the purpose of proposing amendments to that draft, any comments or concerns received in a timely manner from the Bidder and its representatives.

5.6 Timetable

Each party agrees to use its reasonable endeavours to comply with the Timetable (noting that all dates after lodgement of the Target's Statement are indicative only).

5.7 Consent to early dispatch of Bidder's Statement

The Company agrees (by authority of the directors) that the Offer and accompanying documents to be sent by Bidder under the Takeover Bid pursuant to item 6 of section 633(1) of the Corporations Act may be sent up to 14 days earlier than the earliest date for sending under item 6 of section 633(1) of the Corporations Act.

6 Exclusivity

6.1 No shop and no talk

During the Exclusivity Period, each member of the Company Group must not, directly or indirectly (and must procure that none of their Representatives):

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any third party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal; or
- (b) **(general no talk)** subject to clause 6.4,
 - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any document, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;

- (iii) disclose or otherwise provide any material non-public information about the business or affairs of the Company Group to a third party (other than a government agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of conducting due diligence investigations); or
- (iv) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 6.1(b).

6.2 Notification of approaches

- (a) During the Exclusivity Period, the relevant member of the Company Group must notify the Bidder in writing as soon as possible if:
 - (i) it, or any of its related bodies corporate, is approached by any third party (or becomes aware of any such approach) to take any action of a kind that would breach its obligations under clause 6.1(b); or
 - (ii) it proposes to take any action of a kind that would breach its obligations under clause 6.1(b).
- (b) If the Company received a Competing Proposal, and as a result the Company Board proposes to publically change or withdraw its recommendation that they should accept the Offer or otherwise considers that it should recommend the Competing Proposal, the Company must:
 - (i) give the Bidder five clear Business Days' notice in writing of such proposed change or withdrawal; and
 - (ii) provide the Bidder with notice the name of the party making the Competing Proposal, all material terms of the applicable Competing Proposal, including details of the proposed price or implied value (including details of the consideration if not simply cash), conditions, timing and break fee (if any).

The Company will use its reasonable endeavours to ask the person who has made the applicable Competing Proposal (the "**Competing Party**") for their consent to their name and other identifying details which may identify the Competing Party ("**Identifying Details**") being provided by the Company to the Bidder on a confidential basis. If consent is refused, the Company may only withhold the Identifying Details from the Bidder if the Company Board, acting in good faith, after having obtained advice from the Company's external legal advisers, determine that failing to do so would, or would be likely to, involve a breach of the fiduciary or statutory obligations owed by any Company Director.

The Bidder must ensure that any information provided pursuant to this clause 6.2 will be kept confidential and the Bidder shall not disclose such information to any third party without prior written consent by the Company notwithstanding any provisions herein.

6.3 Opportunity to match

- (a) During the five Business Days referred to in clause 6.2, the Bidder may (in its sole discretion) either solely or together with any of its Related Bodies Corporate match that Competing Proposal by giving notice to the

relevant board of the member of the Company Group (the “**Bidder Counterproposal**”).

- (b) The Company Board must consider any Bidder Counterproposal and if the Company Board, acting in good faith, determines that the Bidder Counterproposal would provide an equivalent or a superior outcome for the Target shareholders than the applicable Competing Proposal, taking into account all the terms and conditions of the Bidder Counterproposal, then:
 - (i) the Company and the Bidder must use their best endeavours to agree the amendments to the Transaction Documents that are reasonably necessary to reflect the Bidder Counterproposal as soon as reasonably practicable; and
 - (ii) the Company Board must recommend the Bidder Counterproposal to Target shareholders and not the applicable Competing Proposal.
- (c) Any material modification to any Competing Proposal (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which the Company must comply with its obligations under clauses 6.2 and 6.3 again.

6.4 **Exceptions**

Restrictions under Clause 6.1(b) do not apply to the extent that they restrict or prohibit any action or inaction by the Company Group or a related body corporate in relation to an actual, proposed or potential Competing Proposal if:

- (a) the Company Directors acting in good faith and in order to satisfy what the Company Directors reasonably consider to be their fiduciary or statutory duties based on the opinion of their external legal advisers, reasonably determine that the consequences of failing to respond to such bona fide Competing Proposal or providing the relevant information as required under Clause 6.2 would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties owed by any Company Director or would otherwise be unlawful provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 6.1(a); and
- (b) such Competing Proposal is a Superior Proposal or could reasonably be expected to lead to a Superior Proposal if it is proposed.

6.5 **Presentation**

Nothing in this clause 6 prevents the Company from continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business.

6.6 **Equal access to information**

Subject to confidentiality restrictions that may apply (and if such restrictions do apply, the Company Group must use reasonable endeavours to have the relevant restrictions removed), if (during the Exclusivity Period) any member of the Company Group provides any information relating to any aspect of the Company Group to any person in connection with, or for the purposes of, a current or future Competing Proposal, it must promptly provide the Bidder (as Recipient) with access to, or a copy of, that information.

6.7 Compliance with laws

If it is finally determined by a court or the Takeovers Panel, that the document by the parties set out in this clause 6 or any part of it:

- (a) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the relevant board of the member of the Company Group;
- (b) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the *Corporations Act 2001 (Cth)*;
- (c) was, or is, or would be, unlawful for any other reason,

then to that extent (and only to that extent), the relevant board of the member of the Company Group will not be obliged to comply with that provision of this clause 6.

The parties must not make or cause or permit to be made, any application to a court or the Takeover Panel for, or in relation to, a determination referred to in clause 6.7.

6.8 Legal advice

The Company represents and warrants to the Bidder that:

- (a) prior to entering into this agreement, it has received legal advice on this agreement and the operation of this clause 6; and
- (b) it considers this clause 6 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 6 in order to secure the significant benefits to it, and the Company Shareholders resulting from completion of the Takeover Bid.

7 Reimbursement of costs

7.1 Rationale

Each party acknowledges and agrees, for the purposes of this clause 7:

- (a) each party requires the inclusion of clause 7, in the absence of which it would not have entered into this agreement or otherwise agreed to implement the Takeover Bid;
- (b) the Company and the Company Board believe (in respect of the Company Payment) and the Bidder believes (in respect of the Bidder Payment) that the Takeover Bid will provide significant benefits to it and its shareholders and that it is reasonable and appropriate that the Company (in respect of the Company Payment) and the Bidder (in respect of the Bidder Payment) agree to the inclusion of clause 7.2, in order to secure the other party's execution of this agreement and its agreement to implement the Takeover Bid; and
- (c) the amount payable by the Company (in respect of the Company Payment) pursuant to clause 7.2 and the Bidder (in respect of the Bidder Payment) pursuant to clause 7.3 is to be purely and strictly compensatory in nature and represents a genuine estimate of the amount required to compensate the Bidder (in respect of the Company Payment) and the Company (in respect of the Bidder Payment) for the following:

- (i) reasonable advisory costs (including costs of Advisers other than success fees) relating to the Takeover Bid;
- (ii) cost of management and directors' time;
- (iii) reasonable out-of-pocket expenses relating to the Takeover Bid; and
- (iv) reasonable opportunity costs incurred by the Bidder or the Company (as applicable) in pursuing the Takeover Bid or in not pursuing other alternative acquisitions or strategic initiatives which the Bidder or the Company (as applicable) could have developed to further its business and objectives.

7.2 Company Payment

The Company agrees to pay the Bidder the Company Payment if, at any time after the Announcement Date:

- (a) a Competing Proposal of any kind is announced during the Offer Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, the third party or any associate of that third party:
 - (i) completes a Competing Proposal of a kind referred to in any of paragraphs (b) and (c) of the definition of Competing Proposal; or
 - (ii) entered into an agreement, arrangement or understanding with the Company or the Company Board of the kind referred to in paragraph (d) of the definition of Competing Proposal; or
 - (iii) without limiting clauses 7.2(a)(i) or 7.2(a)(ii), acquires Control of the Company.

7.3 Bidder Payment

The Bidder agrees to pay the Company the Bidder Payment without set-off or withholding if, at any time after the Announcement Date, the Bidder is in material breach of a term of this agreement and does not remedy the breach or cease the conduct which caused the breach within five Business Days following written notice from the Company outlining the nature of the breach.

7.4 Payment

- (a) The payment of the Company Payment to Bidder as provided for in clause 7.2, must be made within 10 Business Days after the occurrence of the event referred to in clause 7.2.
- (b) The payment of the Bidder Payment to the Company as provided for in clause 7.3, must be made within 10 Business Days after the occurrence of the event referred to in clause 7.3.

7.5 Exclusive Remedy

Notwithstanding any other provision under this agreement, where the Company Payment or the Bidder Payment becomes payable to the Bidder or the Company (or would be payable if a demand was made), the Bidder or the Company cannot make any claim against the Company or the Bidder in relation to an event referred to in clause 7.2 or clause 7.3 respectively or for any breach of this

agreement other than for payment of the Company Payment or the Bidder Payment.

For the avoidance of doubt nothing in this clause prevents the Bidder from making demands or claims against the Company in relation to loans or working capital facilities made available to the Company.

7.6 **Refund**

If, notwithstanding the occurrence of any of the events referred to in clause 7.2 or clause 7.3, the Bidder ultimately declares the Offer to be unconditional and becomes the holder of not less than 90% of the Company Shares as a result of the Takeover Bid, the Bidder must repay to the Company any amount received by it under this clause 7.

7.7 **Compliance with law**

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel, a Court or any other Regulatory Authority that all or any part of the amount payable under clause 7.2 or clause 7.3 ("**Impugned Amount**"):

- (a) is unlawful;
- (b) involves a breach of the duties of the Company Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then:

- (d) the Company's obligation to pay the amount payable under clause 7.2 or the Bidder's obligation to pay the amount payable under clause 7.3 does not apply to the extent of the Impugned Amount; and
- (e) if the Bidder has received an Impugned Amount, it must refund it within ten Business Days of the final determination being made.

The parties must not make or cause or permit to be made, any application to a Court or the Takeover Panel for, or in relation to, a determination referred to in clause 7.7.

7.8 **Survival**

- (a) Any accrued obligations under this clause 7 survive termination of this agreement.

8 Warranties

8.1 Reciprocal Warranties

Each of the Bidder and the Company represents and warrants to the other that, as at the date of this agreement:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation; and

- (b) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement; and
- (c) (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it and execution of this agreement will not result in a breach of or default under its constitution or any agreement or deed or writ, order or injunction, rule or regulation to which it or any member of its Group is a party or to which they are bound or require any consent or approval, authorisation or permit from any governmental agency except for the Regulatory Approvals.

8.2 Bidder Warranties

The Bidder represents and warrants to the Company that, as at the date of this agreement:

- (a) the Bidder Shares to be offered as the Share Consideration will be duly authorised and validly issued, fully paid, not liable to the imposition of any duty and be free of all Encumbrances, security interests and third party rights and will rank equally with all other Bidder Shares;
- (b) Schedule 3 accurately records the total number and details of Bidder Shares on issue as at the date of this agreement. There are no other shares, options, notes or other securities of Bidder and no rights to be issued such shares, options, notes or other securities;
- (c) the Bidder does not currently carry out any business and has no material assets and liabilities, are than those which it holds or has incurred in connection with the Offer; and
- (d) the Bidder has available to it on an unconditional basis sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy the Bidder's obligations to pay the Cash Consideration in accordance with its obligations under this agreement.

8.3 Company Warranties

The Company represents and warrants to the Bidder that, as at the date of this agreement:

- (a) to the best of the Company's knowledge, each member of the Company Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (b) Schedule 2 accurately records the total number and details of Company Shares and Employee Shares and Employee Rights to Acquire on issue as at the date of this agreement. There are no other shares, options, notes or other securities of Company and no rights to be issued such shares, options, notes or other securities; and

- (c) it is not in discussions with any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal.

8.4 Reciprocal indemnity

The Company and the Bidder agrees to indemnify the other and will keep that party indemnified against all claims liabilities and losses which it may suffer or incur by reason of any breach of any of the warranties given by it in this clause 8.

9 Termination

9.1 Termination rights

This agreement may be terminated by either party by notice to the other party:

- (a) if the other party is in material breach of this agreement and that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (b) if Bidder withdraws the Takeover Bid as permitted by the Corporations Act or the Takeover Bid lapses for any reason, including non-satisfaction of a Condition;
- (c) if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Takeover Bid;
- (d) if the other party or any of their material Related Bodies Corporate becomes Insolvent; or
- (e) a Superior Proposal is made or publicly announced for the Company by a third party, provided that the Company has complied with its obligations under clause 6 and the Bidder has decided not to match that Superior Proposal in accordance with clause 6.3.

9.2 Termination by Bidder

This agreement may be terminated by the Bidder by notice in writing to the Company if:

- (a) any director of the Company does not recommend the Company Shareholders accept the Cash Consideration component of the Offer or having recommended the Cash Consideration component of the Offer, withdraws or adversely modifies his or her recommendation of the Cash Consideration component of the Offer; or
- (b) a person (other than the Bidder or its associates) has a relevant interest in more than 20% of the Company Shares on issue (other than existing Company Shareholders who at the date of this agreement hold a relevant interest in more than 20% of the Company Shares on issue).

9.3 Termination by the Company

This agreement may be terminated by the Company by a notice in writing to the Bidder if all of the Company Directors adversely change or withdraw their

recommendation to Company Shareholders in relation to the Takeover Bid or recommend a Competing Proposal in accordance with clause 5.4(b).

9.4 Effect of termination

If this agreement is terminated by another party under this clause 9:

- (a) each party will be released from its obligations under this agreement except its obligations under clauses 12 and 13.12;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

10 Announcement of Takeover Bid

10.1 Public announcement of Takeover Bid

Immediately after signing this agreement, the Company must procure the issue of the Announcement.

10.2 Required Disclosure

Where a party is required by law or the Listing Rules to make any announcement or make any disclosure relating to a matter the subject of the Takeover Bid, it may do so only after it has given the other party as much notice as reasonably practicable having regard to its disclosure obligations and has consulted with the other party to the extent reasonably practicable having regard to its disclosure obligations.

10.3 Other Announcements

Subject to clause 10.2, no party may make any public announcement or disclosure in connection with the Takeover Bid (including disclosure to a Regulatory Authority) other than in a form approved by the other party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

11 Notices and other communications

11.1 Form - all communications

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and

- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

11.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) given in any other way permitted by law.

However, if the intended recipient has notified a changed address then communications must be to that address.

11.3 When effective and taken to be received

Communications sent by post are taken to be received and will be effective three days after posting (or seven days after posting if sent from one country to another) unless a later time is specified.

12 Goods and services tax (GST)

12.1 Consideration does not include GST

The consideration specified in this agreement does not include any amount for GST.

12.2 Recovery of GST

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

12.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax invoice.

12.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

12.5 Reimbursement

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

12.6 Survival

This clause 12 will survive termination of this agreement.

13 Miscellaneous

13.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

13.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

13.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

13.4 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

13.5 Conflict of interest

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

13.6 Remedies cumulative

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

13.7 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

13.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on completion of any transaction contemplated by this agreement.

13.9 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

13.10 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or

(b) to show whether the party is complying with this agreement.

13.11 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

13.12 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

13.13 Stamp duty

The Bidder agrees to pay all stamp duty (including fines and penalties) payable and assessed on this agreement or in respect of a transaction evidenced by this agreement.

13.14 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

13.15 Assignment

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the prior written consent of the other party.

13.16 No representation or reliance

Each party acknowledges that:

- (a) 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;
- (b) 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; and
- (c) clauses 13.16(a) and 13.16(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

13.17 Governing law

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

13.18 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

13.19 Knowledge and belief

Any statement made by a party on the basis of its knowledge, information, belief or awareness, is made on the basis that the party has, in order to establish that the statement is accurate and not misleading in any material respect, made all reasonable enquiries of its officers, managers and employees who could reasonably be expected to have information relevant to matters to which the statement relates.

Takeover implementation agreement

Schedule 1 - Conditions to the Offer

The Offer, and any contract resulting from the acceptance of the Offer, are subject to the following conditions:

- (a) **(minimum acceptance)** during or at the end of the Offer Period, the Bidder Group together have received acceptances under the Offer which give the Bidder Group a relevant interest in at least 90% of the Company Shares.
- (b) **(FIRB approval)** During the offer period:
 - (i) the Treasurer of the Commonwealth of Australia (the “**Treasurer**”) (or a delegate) provides a no objections notification pursuant to the Foreign Acquisitions and Takeovers Act 1975 (Cth) (“**FIRB Act**”) in respect of the acquisition of all of the Company’s shares by the Bidder without conditions; or
 - (ii) following notice of the proposed acquisition of all of the Company’s shares by the Bidder having been given by the Bidder to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired.
- (c) **(other regulatory approvals)** prior to the end of the Offer Period, all appropriate waiting and other time periods (including any extensions of such waiting and other time periods) under applicable laws or regulations of any relevant jurisdiction or in connection with any material licence or other authorisation held by the Company or any subsidiary having expired, lapsed or been terminated (as appropriate) and all regulatory obligations in any relevant jurisdiction and other obligations in connection with any material licence or other authorisation held by the Company or any subsidiary having been complied with in each case in respect of the offer or any matter arising as a result of the Offer.
- (d) **(no restraining orders)** that between the Announcement Date and the end of the Offer Period:
 - (i) there is not in effect any preliminary or final decision, order or decree issued by any Regulatory Authority; and
 - (ii) no application is made to any Regulatory Authority (other than by a member of the Bidder Group), or action or investigation is announced, threatened or commenced by a Regulatory Authority,

in consequence of, or in connection with, the offer (other than a determination by ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act), which:

- (iii) restrains, prohibits or impedes (or if granted could restrain, prohibit or impede), or otherwise materially adversely impacts on, the making of the offer or the completion of any transaction contemplated by the offer (whether subject to conditions or not)

or the rights of Bidder in respect of the Company and the Company Shares to be acquired under the Offer; or

- (iv) requires the divestiture by Bidder of any Company Shares, or the divestiture of any assets of the Company Group, the Bidder Group, or otherwise.
- (e) **(no material adverse effect)** that no specified event occurs that will or is reasonably likely to have a material adverse effect on the assets and liabilities, financial position and performance, profits and losses or prospects of any member of the Company Group, including as a result of making the Offer or the acquisition of Company shares pursuant to the Offer. For these purposes, a “specified event” is:
 - (v) an event or occurrence that occurs during the Offer Period;
 - (vi) an event or occurrence that occurs prior to the Offer Period but is only announced or publicly disclosed during or after the announcement date; or
 - (vii) an event or occurrence that will or is likely to occur following the Offer Period and which has not been publicly announced prior to the Announcement Date.
- (f) **(no material acquisitions, disposals or new commitments)** except for any proposed transaction publicly announced by the Company before the Announcement Date, none of the following events occurs during the period from the Announcement Date to the end of the Offer Period:
 - (i) a member of the Company Group acquires, offers to acquire or agrees to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$1,000,000 or makes an announcement in relation to such an acquisition, offer or agreement;
 - (ii) a member of the Company Group disposes of, offers to dispose of or agrees to dispose of one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount, or in respect of which the book value (as recorded in Company’s statement of financial position as at 30 September 2016) is, in aggregate, greater than \$1,000,000 or makes an announcement in relation to such a disposition, offer or agreement, other than a disposal of Marketable Securities;
 - (iii) a member of the Company Group enters into, or offers to enter into or agrees to enter into, any agreement, joint venture, partnership, management agreement or commitment which would require expenditure, or the foregoing of revenue, by a member of the Company Group of an amount which is, in aggregate, more than \$1,000,000, other than in the ordinary course of business, or makes an announcement in relation to such an entry, offer or agreement;
- (g) **(no persons exercising rights under certain agreements or instruments)** after the announcement date and before the end of the Offer Period, no person (other than a member of the Bidder Group including the lender under the Facility Agreement) exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument to which a member of the Company Group is a party, or by or to which a member of the Company

Group or any of its assets may be bound or be subject, which results, or could result, to an extent which is material in the context of the Company Group taken as a whole, in:

- (i) any monies borrowed by a member of the Company Group being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder;
- (iii) the interest of a member of the Company Group in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified; or
- (iv) the business of a member of the Company Group with any other person being adversely affected,

as a result of the acquisition of the Company Shares by the Bidder;

- (h) (**prescribed occurrences**) that during the period beginning on the Announcement Date and ending at the end of the Offer Period, none of the following events happen:
 - (i) the Company converts all or any of the Company Shares into a larger or smaller number of shares;
 - (ii) a member of the Company Group resolves to reduce its share capital in any way;
 - (iii) a member of the Company Group:
 - (A) enters into a buy-back agreement; or
 - (B) resolves to approve the terms of a buy-back agreement under section 257C(1) or section 257D(1) of the Corporations Act;
 - (iv) a member of the Company Group issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option, except any option granted to a member of the Bidder Group pursuant to the Facility Agreement;
 - (v) a member of the Company Group issues, or agrees to issue, convertible notes;
 - (vi) a member of the Company Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property. For avoidance of doubt, this does not prohibit the disposal of Marketable Securities.
 - (vii) a member of the Company Group charges, or agrees to charge, the whole, or a substantial part, of its business or property;
 - (viii) a member of the Company Group resolves to be wound up;
 - (ix) a liquidator or provisional liquidator of a member of the Company Group is appointed;

- (x) a court makes an order for the winding up of a member of the Company Group;
 - (xi) an administrator of a member of the Company Group is appointed under sections 436A, 436B or 436C of the Corporations Act;
 - (xii) a member of the Company Group executes a deed of company arrangement; or
 - (xiii) a receiver or a receiver and manager is appointed in relation to the whole, or a substantial part, of the property of a member of the Company Group other than by a member of the Bidder Group.
- (i) **(no termination of this agreement by the Company)** between the Announcement Date and the end of the Offer Period, the Company does not terminate this agreement in accordance with its terms.
 - (j) **(no material breach of this agreement by the Company)** between the Announcement Date and the end of the Offer Period, the Company is not in breach of any provision of this agreement in circumstances where:
 - (i) that breach is material;
 - (ii) the Bidder has given written notice to the Company setting out that breach: and
 - (iii) either:
 - (A) the breach is incapable of remedy; or
 - (B) if the breach is capable of remedy but the breach is not remedied by the Company within 5 Business Days of it receiving notice from the Bidder.
 - (k) **(Company licences)** that between the Announcement Date and the end of the Offer Period all material approvals, licences, permits, consents, notifications, declarations or other authorisation required for the lawful operation of the business (including the occupation or use of any land and the conduct of any business on or in connection with any land) conducted by Company remain in force (including by renewal).
 - (l) **(Company Directors to recommend)** the Company Directors unanimously recommend that the Company Shareholders accept the Cash Consideration component of the Offer in the Target Statement and any other public statements made by the Company in relation to the Takeover Bid, and do not modify that recommendation.
 - (m) **(Employee Securities)** any entitlement to shares under Employee Securities are cancelled.

Takeover implementation agreement

Schedule 2 - Company Shares, Employee Shares and Employee Rights to Acquire

Company Shares

Share class	Number of shares in issue	Amount paid up on those shares
Ordinary shares	562,635,912	Fully paid
Reserved shares (EMO)	1,461,808	Fully paid
Class A \$0.25 ordinary shares	100,000	1 cent paid up, 24 cents unpaid
Class B \$0.50 ordinary shares	1,500,000	1 cent paid up, 49 cents unpaid

Employee Shares and Employee Rights to Acquire:

	Number Vested	Number Unvested	Total
Employee Shares (allocated)	190,294 [^]	266,386 [*]	456,680
Employee Shares (unallocated)	341,501 [^]	43,274 [*]	384,775
Employee Rights to Acquire	480,792 [*]	671,356 [*]	1,152,148
	1,012,587	981,016	1,993,603

* to be quoted on ASX, currently forming part of 1,461,808 Reserved shares (EMO)

[^] vested shares quoted on ASX forming part of 562,635,912 Fully paid ordinary shares

Takeover implementation agreement

Taurus Options:

Issue date	Number of Options	Expiry Date	Exercise Price	Holders
3 May 2016	1,576,215	15 July 2020	\$0.0878	Taurus Resources No.2 BV
10 August 2016	1,576,215	15 July 2020	\$0.0878	Taurus Resources No.2 BV
3 January 2017	1,576,215	15 July 2020	\$0.0878	Taurus Resources No.2 BV
TOTAL	4,728,645	15 July 2020	\$0.0878	Taurus Resources No.2 BV

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Schedule 3 – Bidder Shares

Share class	Number of shares in issue	Par value	Amount paid up on those shares	Holder
Ordinary shares	100	CAN\$1	100	Taurus
TOTAL	100	-	100	

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Schedule 4 – Announcement

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Schedule 5 – Timetable

Announcement Date	Day 1
Lodge Bidder's Statement with ASIC, ASX and the Company	On the 20 th Business Day after Day 1
Dispatch Bidder's Statement to Company Shareholders	On the 20 th Business Day after Day 1 (the "Offer Date")
Bidder to notify the Company that the Bidder's Statement has been dispatched to all Company Shareholders	Approximately the 21 st Business Day after Day 1
Lodge Target's Statement with ASIC, ASX, the Bidder and Company Shareholders	Approximately the 32 nd Business Day after Day 1
Assumed date on which the Conditions will be satisfied	Approximately the 35 th Business Day after Day 1
Assumed date to Close Offer Period and proceed with compulsory acquisition	Approximately the 41 st Business Day after Day 1
Assumed date to complete Takeover Bid	Approximately the 61 st Business Day after Day 1

Takeover implementation agreement

Signing page

DATED: 13 February 2017

EXECUTED by HEEMSKIRK
CONSOLIDATED LIMITED in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


.....
Signature of director

GARRY J. CAMERON
.....
Name of director (block letters)


.....
Signature of ~~director~~ company
secretary*

*delete whichever is not applicable

TRISH HALLY
.....
Name of ~~director~~ company secretary*
(block letters)

*delete whichever is not applicable

EXECUTED for and on behalf of
NORTHERN SILICA CORPORATION
by its authorised representative:

.....
Signature of authorised representative

.....
By signing this document, the
authorised representative confirms they
are duly authorised to sign this
document on behalf of Northern Silica
Corporation



Takeover implementation agreement

Signing page

DATED: 13 February 2017

EXECUTED by **HEEMSKIRK
CONSOLIDATED LIMITED** in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

EXECUTED for and on behalf of
NORTHERN SILICA CORPORATION
by its authorised representative:

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

.....
Signature of authorised representative

MARTIN BOCAHO - DIRECTOR

By signing this document, the
authorised representative confirms they
are duly authorised to sign this
document on behalf of **Northern Silica
Corporation**