
Scheme Implementation Agreement

Indophil Resources NL

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Title **Scheme Implementation Agreement**

Date 22 September 2014

Parties **Indophil Resources NL** (ACN 076 318 173) of Level 3, 411 Collins Street,
Melbourne VIC 3000 (**Target**)

Alsons Prime Investments Corporation of 2286 Chino Roces Avenue,
Makati City, Philippines (**Bidder**)

Recitals

- A Bidder wishes to acquire all of the fully paid ordinary shares of Target by means of a scheme of arrangement under Part 5.1 of the *Corporations Act*.
- B Target and Bidder propose to implement the Scheme on the terms and conditions of this Agreement.

Operative provisions

1 Definitions and interpretation

Definitions

- 1.1 In this Agreement, unless the context otherwise requires:

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

AIFRS means the International Financial Reporting Standards as adopted in Australia.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this Agreement and Target were the designated body.

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

Bidder Indemnified Party means Bidder and its Representatives.

Bidder Prescribed Event means the occurrence of any of the following:

- (a) Bidder is or becomes unable to pay its debts when they fall due;
- (b) Bidder resolving that it be wound up;
- (c) Bidder is deregistered as a company;
- (d) Bidder suspends or threatens to suspend payment of its debts as and when they become due;

- (e) Bidder ceases or threatens to cease to carry on the business conducted as at the date of this Agreement;
- (f) a liquidator, provisional liquidator or administrator of Bidder being appointed;
- (g) the making of an order by a court for the winding up of Bidder;
- (h) Bidder entering into a compromise or arrangement with its creditors generally (including by executing a deed of company arrangement);
- (i) a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of Bidder being appointed; or
- (j) Bidder directly or indirectly authorising, committing or agreeing to take any of the actions referred to in paragraphs (a) to (i) above,

however, none of the above events will constitute a Bidder Prescribed Event where Bidder has first consulted, in reasonable detail, with Target in relation to the proposed event, and Target has approved in writing the proposed event.

Bidder Scheme Information means information about Bidder which is provided to Target by or on behalf of Bidder to enable the Scheme Booklet to be prepared in accordance with all applicable laws, applicable ASIC guidance and policies and the Listing Rules, or to the Independent Expert to enable it to prepare its report, including information regarding the arrangements Bidder has in place to fund the Scheme Consideration and Bidder's intentions with respect to the assets, business and employees of Target if the Scheme is implemented.

Bidder Warranties means the representations and warranties of Bidder set out in clause 7.4.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne.

Claim means a demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent, including any claim for specific performance.

Competing Proposal means any expression of interest, offer or proposal by any person (other than Bidder or its Associates):

- (a) to consider or enter into any transaction which, if ultimately completed, will have the result that:
 - (i) any person or two or more persons who are Associates (other than Bidder or its Associates) will, or would reasonably be expected to, acquire voting power in 20% or more of Target Shares; or
 - (ii) any person or two or more persons who are Associates (other than Bidder or its Associates) will, or would reasonably be expected to, acquire control of Target, within the meaning of section 50AA of the Corporations Act,

including by way of a takeover bid, scheme of arrangement, amalgamation, merger, capital reconstruction, consolidation, shareholder-approved Target Share acquisition or issuance, share buy-back or repurchase, reverse takeover, establishment of a new holding entity for Target or any other transaction or arrangement with Target;
- (b) to acquire, have a right to acquire or obtain an economic interest in (whether directly or indirectly) 20% or more (by value) of the securities, assets (excluding cash), cash or business of the Target Group; or

- (c) to form a dual listed company structure, stapled security structure or other form of synthetic merger having the same or substantially the same effect as a takeover bid for, or scheme of arrangement or merger in respect of, Target.

Completion means completion of the implementation of the Scheme on the Implementation Date.

Confidentiality Deed means the confidentiality deed between Target and Bidder dated 15 September 2014.

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

Court means a court of competent jurisdiction under the Corporations Act.

Deed Poll means the deed poll to be executed by Bidder substantially in the form of Annexure 2 under which Bidder covenants in favour of Target Shareholders to perform its obligations under this Agreement and the Scheme.

Dispatch Date means the day that the Scheme Booklet is dispatched to Target Shareholders.

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

Effective Date means the date on which an office copy of the Court order made under section 411(4)(b) of the Corporations Act approving the Scheme is lodged with ASIC.

Excluded Shareholder means Bidder and any Related Bodies Corporate of Bidder that is a Target Shareholder and which Bidder has categorised as an "Excluded Shareholder" via a notice in writing provided to Target at least five Business Days prior to the First Court Date.

Exclusivity Period means the period between the date of this Agreement and the earliest of:

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

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

First Court Date means the date of the hearing by the Court of the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

FTAA means the document titled '*Financial and Technical Assistance Agreement*' dated 22 March 1995 between WMC (Philippines), Inc. and the Government of the Republic of the Philippines in relation to the Tampakan copper gold deposit on the Southern Island of Mindanao, Philippines which was assigned to SMI (as amended).

Government Agency means a:

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

and includes ASX, ASIC, the Australian Competition and Consumer Commission, the Foreign Investment Review Board and the Takeovers Panel.

GST means goods and services tax as defined in *A New Tax Systems (Goods and Services Tax) Act 1999* (Cth), or any like tax.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.

Implementation means the implementation of the Scheme, on it becoming Effective under section 411(10) of the Corporations Act.

Implementation Date means the third Business Day after the Scheme Record Date.

Independent Director means each member of the Target board other than Mr Nicasio Alcantara and Mr Frederic DyBuncio.

Independent Expert means an expert independent of the parties engaged by Target to opine (and prepare a report for inclusion in the Scheme Booklet) on whether the Scheme is in the best interests of Target Shareholders.

Listing Rules means the listing rules of ASX as amended from time to time.

Material Adverse Event means the revocation or termination of the FTAA or any other circumstances which have a similar or analogous effect or which result in the FTAA ceasing to be held by SMI.

Natural Event means flood, earthquake or volcanic eruption or other natural event.

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

Option means an option to subscribe for a Target Share.

Other Proposal has the meaning given to that term in clause 13.6.

Register means the register of shareholders of Target.

Regulatory Consents has the meaning given to that term in clause 3.3(a).

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

Representative means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of the Officers and Advisers of the entity or any of its Related Bodies Corporate.

Scheme means the scheme of arrangement, substantially in the form set out in Annexure under Part 5.1 of the Corporations Act between Target and Target Shareholders as described in clause 4, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Target and Bidder.

Scheme Booklet means the document including the information described in clause 6.1(a) to be approved by the Court and dispatched to Target Shareholders.

Scheme Consideration means \$0.30 in respect of each Scheme Share.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Record Date means 7.00 pm on the fifth Business Day after the Effective Date.

Scheme Share means a Target Share held by a Scheme Shareholder as at the Scheme Record Date.

Scheme Shareholder means each person who holds a Target Share as at the Scheme Record Date (excluding each Excluded Shareholder).

Second Court Date means the date of the hearing by the Court of the application to approve the Scheme under section 411(4)(b) of the Corporations Act.

Senior Manager means an employee of any Target Group Member reporting directly to the managing director, chief financial officer or group chief operating officer of Target and **Senior Management** has a corresponding meaning.

Share Splitting means the splitting by a holder of Target Shares of those Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares.

SMI means Sagittarius Mines Inc. (a company incorporated in the Philippines).

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

Sunset Date means:

- (a) 5.00 pm on 27 February 2015 or, if clause 6.4 applies, 29 May 2015 (or any earlier date agreed between Target and Bidder in accordance with clause 6.4(b)); or
- (b) such other date and time agreed in writing between Target and Bidder.

Superior Proposal means a bona fide Competing Proposal which in the determination of the Target Board, acting in good faith and reasonably (after having taken advice from their legal and financial advisers):

- (a) is reasonably capable of being completed in accordance with its terms, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Target Shareholders as a whole than the Scheme, taking into account all terms and conditions of the Competing Proposal including consideration, conditionality, funding, certainty and timing.

Target Board means the board of directors of Target as constituted from time to time.

Target Due Diligence Information means all information disclosed or made available by or on behalf of Target and its Representatives (including all responses to requests for information and any disclosure letter) to Bidder or its Representatives prior to the date of this Agreement.

Target Group means Target and each of Target's Subsidiaries and **Target Group Member** has a corresponding meaning.

Target Indemnified Party means each Target Group Member and their respective Representatives.

Target Prescribed Event means the occurrence of any of the following:

- (a) a Target Group Member converting all or any of its shares into a larger or smaller number of shares;
- (b) a Target Group Member resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) a Target Group Member entering into a buy-back agreement, or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Target declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (e) a Target Group Member issuing shares, or granting an option over its shares or a right to be issued shares (including performance rights), or agreeing to make such an issue or grant such an option or right;
- (f) a Target Group Member issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) a Target Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (h) other than in the ordinary course of business and consistent with past practice, a Target Group Member creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property;
- (i) a Target Group Member is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (j) a Target Group Member resolving that it be wound up;
- (k) a Target Group Member is deregistered as a company;
- (l) a Target Group Member suspends or threatens to suspend payment of its debts as and when they become due;
- (m) a Target Group Member ceases or threatens to cease to carry on the business conducted as at the date of this Agreement;
- (n) a liquidator, provisional liquidator or administrator of a Target Group Member being appointed;
- (o) the making of an order by a court for the winding up of a Target Group Member;
- (p) a Target Group Member entering into a compromise or arrangement with its creditors generally (including by executing a deed of company arrangement);
- (q) a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of a Target Group Member being appointed;
- (r) anything analogous to those set out in any of paragraphs (i) to (q) inclusive occurs in relation to the person under the laws of the Philippines;
- (s) a Target Group Member making any material change or amendment to its constitution;

- (t) any disposal of shares or securities by a Target Group Member in any Target Group Member other than to a Target Group Member; or
- (u) any Target Group Member directly or indirectly authorising, committing or agreeing to take or announcing any of the actions referred to in paragraphs (a) to (t) above insofar as it applies to the Target Group Member the subject of such direct or indirect authorisation, commitment, agreement or announcement,

however none of the above events will constitute a Target Prescribed Event where:

- (a) Target has first consulted, in reasonable detail, with Bidder in relation to the proposed event, and Bidder has approved in writing the proposed event;
- (b) the event was fairly disclosed in the Target Due Diligence Information on or before the date of this Agreement;
- (c) the event was publicly announced by Target or otherwise fairly disclosed in publicly available filings by Target or any of its Subsidiaries with ASX or ASIC at least two Business Days prior to the date of this Agreement;
- (d) the Target Group Member is required to undertake the event in connection with the Scheme or this Agreement; or
- (e) an event specified in paragraphs (i) to (q) occurs in respect of a non-trading Subsidiary of Target that does not hold any material assets.

Target Scheme Information means all information included in the Scheme Booklet other than the Bidder Scheme Information and the Independent Expert's report.

Target Share means an issued fully paid ordinary share in Target.

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

Target Shareholder Approval means a resolution by Target Shareholders in favour of the Scheme passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act or, in the circumstances contemplated by clause 3.4, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act.

Target Warranties means the representations and warranties of Target set out in clause 7.1.

Timetable means the indicative timetable set out in Annexure 1.

Treasurer means the Treasurer of the Commonwealth of Australia.

voting power has the meaning given to that term in Chapter 6 of the Corporations Act.

Interpretation

1.2 In this Agreement:

- (a) unless the context requires another meaning, a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;

- (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (v) to a party means a party to this Agreement;
- (vi) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this Agreement;
- (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
- (viii) to a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency;
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
 - (C) a reference to the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;
- (ix) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (x) to proceedings includes litigation, arbitration and investigation;
- (xi) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (xii) to time is to prevailing Melbourne time; and
- (xiii) to \$ means the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) the words "fairly disclosed" means disclosed to Bidder or its Representatives in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Representatives) experienced in transactions similar to the Scheme and experienced in a business similar to any business conducted by the Target Group, to identify the nature, scope and implications of the relevant matter, event or circumstance;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) headings are for convenience only and do not affect interpretation of this Agreement;
- (f) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (g) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

Construction

- 1.3 This Agreement may not be construed adversely to a party only because that party or its legal advisers were responsible for preparing it.

Payments

- 1.4 Unless otherwise expressly provided in this Agreement, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this Agreement, that amount must be paid:
- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties agree; and
 - (b) without deduction, withholding or set-off.

In this clause 1.4, a Receiving Party does not include a Scheme Shareholder.

2 Agreement to propose Scheme

- 2.1 Target will propose and seek to implement the Scheme in accordance with this Agreement and the Corporations Act and Target will use reasonable endeavours to implement the Scheme substantially in accordance with the Timetable.
- 2.2 Bidder will comply with its obligations under the Scheme and the Deed Poll, and provide reasonable assistance to Target in proposing and implementing the Scheme in accordance with this Agreement.

3 Conditions

Conditions

- 3.1 Subject to this clause 3, the Scheme will not become Effective and the obligations of the parties in relation to the Scheme (including the obligations of Bidder to pay the Scheme Consideration to Scheme Shareholders under the Deed Poll) will not become binding until each of the following conditions is satisfied or waived in accordance with clauses 3.5 to 3.11:
- (a) **(Orders convening Scheme Meeting)** The Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act.
 - (b) **(Target Shareholder Approval)** Target Shareholder Approval is obtained at the Scheme Meeting.
 - (c) **(Court approval of Scheme)** The Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme on the Second Court Date, either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably).
 - (d) **(Order lodged with ASIC)** An office copy of the Court order approving the Scheme is lodged with ASIC as contemplated by section 411(10) of the Corporations Act on or before the Sunset Date.
 - (e) **(No prohibitive orders)** No judgment, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any Australian court or other Australian Government Agency of competent jurisdiction

remains in force at 8.00 am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the implementation of the Scheme (or any transaction contemplated by the Scheme).

- (f) **(FIRB Approval)** Bidder receives a notice, on terms reasonably acceptable to Bidder, from the Treasurer (or his agent) by 8.00 am on the Second Court Date to the effect that there is no objection to the acquisition of the Scheme Shares by Bidder under the Commonwealth Government's foreign investment policy, or the period provided for under the FATA during which the Treasurer may make orders prohibiting the acquisition of the Scheme Shares by Bidder elapses prior to 8.00 am on the Second Court Date without any such order being made.
- (g) **(No Target Prescribed Event)** No Target Prescribed Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (h) **(No Bidder Prescribed Event)** No Bidder Prescribed Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (i) **(No change of Independent Director recommendation)** Between the date of this Agreement and Target Shareholders voting on the Scheme at the Scheme Meeting, no Independent Director adversely changes, adversely qualifies or withdraws his recommendation to Target Shareholders to vote in favour of the Scheme (which recommendation may have been expressed to be given in the absence of a Superior Proposal and subject to the Independent Expert opining to the effect that the Scheme is in the best interests of Target Shareholders).
- (j) **(Independent Expert's report)** The Independent Expert issues its report (which may be in draft) before the date on which the Scheme Booklet is provided to ASIC and the Independent Expert concludes in its final report which is included in the Scheme Booklet that the Scheme is in the best interests of Target Shareholders (and does not change that conclusion prior to 8.00 am on the Second Court Date).
- (k) **(Target Warranties)** As at 8.00 am on the Second Court Date, Bidder is not entitled to terminate this Agreement pursuant to clause 8.1 due to a breach of a Target Warranty.
- (l) **(Bidder Warranties)** As at 8.00 am on the Second Court Date, Target is not entitled to terminate this Agreement pursuant to clause 8.1 due to a breach of a Bidder Warranty.
- (m) **(Options)** Between the date of this Agreement and 8.00 am on the Second Court Date, Target does not amend or vary the terms of any Options granted by Target.
- (n) **(No Material Adverse Event)** No Material Adverse Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (o) **(No Natural Event)** Between the date of this Agreement and 8.00 am on the Second Court Date, there is no Natural Event which occurs that has or would be reasonable likely to have a material adverse effect on SMI or the Target Group's business, financial affairs or prospects.

Reasonable endeavours

3.2 Each of Target and Bidder must use its reasonable endeavours to procure that:

- (a) each of the conditions in clause 3.1 is satisfied as expeditiously as possible and in any event on or before the Sunset Date and continues to be satisfied at all times until the

last time it is required to be satisfied (as the case may require), including providing all reasonable assistance to the other party which is necessary to satisfy such conditions; and

- (b) there is no occurrence within the control of Target or Bidder (as the context requires) or their respective Related Bodies Corporate that would prevent the conditions in clause 3.1 from being satisfied.

3.3 Without limiting clause 3.2, Bidder must:

- (a) promptly apply for the regulatory consent or approval required to satisfy the condition in clause 3.1(f) (the **Regulatory Consent**) and provide Target with a copy of that application;
- (b) take all the steps as part of the Regulatory Consent process, including responding to requests for information at the earliest practicable time;
- (c) provide Target with all information reasonably requested in connection with the application for the Regulatory Consent. Where the information is confidential or commercially sensitive to the party, it may provide the information directly to the relevant Government Agency; and
- (d) consult with Target in advance in relation to all material communications with any Government Agency relating to the Regulatory Consent and, so far as it is able, allow Target and its Representatives the opportunity to be present at any meetings with any Government Agency.

Share splitting

3.4 If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Target and Bidder agree (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Target must:

- (a) apply for an order of the Court of the type contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

Waiver of conditions

- 3.5 The conditions in clauses 3.1(e) and (f) are for the joint benefit of Target and Bidder and may only be waived jointly by them.
- 3.6 The conditions in clauses 3.1(h), (j) and (l) are for the sole benefit of Target and may only be waived by Target.
- 3.7 The conditions in clauses 3.1(g), (i), (k), (m), (n) and (o) are for the sole benefit of Bidder and may only be waived by Bidder.
- 3.8 The conditions in clauses 3.1(a), (b), (c) and (d) cannot be waived.

- 3.9 To be effective any waiver of the breach or non-fulfilment of any condition in clause 3.1 must be in writing and a copy of the waiver must be provided to the other party prior to 8.00 am on the Second Court Date to be effective.
- 3.10 Subject to clause 3.11, a waiver of any condition in clause 3.1 precludes the party who has the benefit of the condition from suing the other party for any breach of this Agreement that resulted in or from any breach or non-fulfilment of the condition.
- 3.11 A party entitled to waive a condition under clause 3.1 may do so in its absolute discretion. If the party who has the benefit of a condition in clause 3.1 waives a breach or non-fulfilment of the condition on one or more terms, and the other party agrees to those terms, then those terms will apply notwithstanding any inconsistency with clause 3.9. If the other party does not agree to the terms of any waiver, the relevant condition will not be waived.

Failure of condition

- 3.12 Subject to clause 6.4, if a condition in clause 3.1:
- (a) is not satisfied or (where capable of waiver) waived by the date specified for its satisfaction; or
 - (b) becomes incapable of being satisfied by the date specified for its satisfaction and is not waived,
- and neither of the following has occurred:
- (c) the Independent Expert has opined to the effect that the Scheme is not in the best interests of Target Shareholders; or
 - (d) a Superior Proposal has been publicly announced;
- then Target and Bidder must consult in good faith with a view to determining whether:
- (e) the Scheme may proceed by way of alternative means or methods;
 - (f) to extend the relevant time or date for satisfaction of the Conditions;
 - (g) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by Target and Bidder; or
 - (h) to extend the Sunset Date.
- 3.13 If Target and Bidder are unable to reach agreement under clause 3.12 within five Business Days of the date on which they both become aware that the condition is not satisfied or has become incapable of being satisfied (or, if earlier, by 8.00 am on the Second Court Date), or the parties are not required in the circumstances to consult under clause 3.12, then unless the relevant condition is waived (and subject to clause 3.14) the party entitled to the benefit of that condition, or either Target or Bidder in the case of a condition which is for the benefit of both of them, may terminate this Agreement at any time prior to 8.00 am on the Second Court Date with immediate effect by written notice to the other party.
- 3.14 A party may not terminate this Agreement under clause 3.13 if the relevant condition in clause 3.1 has not been satisfied, or is incapable of being satisfied, or there is an occurrence that will prevent the relevant condition being satisfied by the date specified in this Agreement for its satisfaction, as a result of an act or omission by that party or any of its Related Bodies Corporate which results in a breach of this Agreement and either alone or together with other circumstances prevents that condition being satisfied or capable of being satisfied.

- 3.15 Subject to the rights of the parties under clauses 7.7, 9, 10, 12, 13, 15 and 16 of this Agreement, following any termination under clause 3.13 no party will have any liability to the other parties in respect of this Agreement, other than in respect of a breach of this Agreement occurring prior to that termination.

Notice of changes

- 3.16 Each of Target and Bidder must keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the conditions in clause 3.1.
- 3.17 Target must promptly notify Bidder, and Bidder must promptly notify Target, after it becomes aware that any condition in clause 3.1 has been satisfied, has become incapable of being satisfied or is not reasonably capable of being satisfied (having regard to the respective obligations of each party under clauses 3.2 and 3.3).
- 3.18 Upon receipt of notice given under clause 3.17, Target or Bidder, as applicable, must give notice to the notifying party as soon as practicable as to whether or not it waives the breach or non-fulfilment of any condition in clause 3.1 which has become incapable of being satisfied.
- 3.19 Target must promptly notify Bidder, and Bidder must promptly notify Target, of any change, matter, event or circumstance causing, or which is reasonably likely to cause:
- (a) a representation or warranty in this Agreement to be breached; or
 - (b) a material breach of this Agreement,
- and must provide Bidder or Target (as applicable) with reasonable details of the relevant breach.

Certificates

- 3.20 On the Second Court Date:
- (a) Bidder and Target will provide a joint certificate to the Court confirming whether or not the conditions set out in clauses 3.1(e) and (f) have been satisfied or waived in accordance with the terms of this Agreement;
 - (b) Target will provide a certificate to the Court confirming whether or not the conditions set out in clauses 3.1(a), (b), (g), (i), (j), (k), (m), (n) and (o) have been satisfied or waived in accordance with the terms of this Agreement; and
 - (c) Bidder will provide a certificate to the Court confirming whether or not the conditions set out in clauses 3.1(h) and (l) have been satisfied or waived in accordance with the terms of this Agreement.

4 Scheme of Arrangement

Scheme

- 4.1 Target will, as soon as reasonably practicable after the date of this Agreement and substantially in compliance with the Timetable, propose a scheme of arrangement under which, subject to the Scheme becoming Effective, all the Scheme Shares will be transferred to Bidder.

Scheme Consideration

- 4.2 In consideration of the Scheme Shareholders transferring their Scheme Shares to Bidder at Completion, Bidder covenants in Target's favour (in its own right and separately as trustee or

nominee for each Scheme Shareholder) that Bidder will, by no later than the Business Day immediately prior to the Implementation Date, pay the aggregate amount of the Scheme Consideration for all Scheme Shareholders in cleared funds into a trust account operated by Target for all Scheme Shareholders, in accordance with the terms of the Scheme and the Deed Poll.

Deed Poll

- 4.3 Bidder covenants in favour of Target (in its own right and separately as trustee for each of the Target Shareholders) to execute and deliver prior to the First Court Date and (subject to its terms) perform the Deed Poll.
-

5 Co-operation

Giving effect to Scheme

- 5.1 Each party must use its reasonable endeavours to give effect to the Scheme and must execute all documents and do all acts and things as may be necessary or desirable for the Implementation of the Scheme substantially in accordance with the Timetable, subject to compliance with their respective obligations, powers and duties under this Agreement, their constituent documents and all applicable laws and the proper performance by the directors of each of Target and Bidder of their fiduciary duties.

Scheme Booklet

- 5.2 Each of Target and Bidder must each use its reasonable endeavours and utilise all reasonable resources (including management, shareholder, marketing and corporate relations resources, as well as the resources of external advisers) to produce the Scheme Booklet as soon as reasonably practicable, and substantially in accordance with the Timetable, subject to compliance with their respective obligations, powers and duties under this Agreement.
-

6 Implementation

Target's obligations

- 6.1 Target must take all reasonably necessary steps to propose and implement the Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and substantially in accordance with the Timetable, including doing anything required on behalf of Target Shareholders which Target is authorised to do. This includes:
- (a) **(Scheme Booklet)** Preparing the Scheme Booklet and dispatching the Scheme Booklet to Target Shareholders. The Scheme Booklet must:
 - (i) include:
 - (A) the Scheme;
 - (B) a notice of the Scheme Meeting and proxy forms;
 - (C) an explanatory statement in relation to the Scheme issued under section 412 of the Corporations Act and registered by ASIC;
 - (D) a copy of the Independent Expert's report, a copy of this Agreement (without the schedules or annexures) and a copy of the executed Deed Poll;

- (E) a statement that each Independent Director recommends that Target Shareholders vote in favour of the Scheme, which may be expressed as subject to the Independent Expert opining to the effect that the Scheme is in the best interests of Target Shareholders and to be given in the absence of a Superior Proposal; and
 - (F) a statement that each Independent Director who holds Target Shares, or on whose behalf Target Shares are held, intends to vote those Target Shares in favour of the Scheme, which statement may be expressed as subject to the Independent Expert opining to the effect that the Scheme is in the best interests of Target Shareholders and to be given in the absence of a Superior Proposal; and
- (ii) comply with all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules.
- (b) **(Consultation)** Providing Bidder with drafts of the Scheme Booklet, consulting with Bidder in relation to the content and presentation of the Scheme Booklet and giving Bidder and its representatives a reasonable opportunity to provide input about the content and presentation of the Scheme Booklet and obtaining Bidder's consent to include the Bidder Scheme Information in the form and context in which it appears.
- (c) **(Engage the Independent Expert)** After consulting with Bidder, engaging the Independent Expert to prepare and provide its report for inclusion in the Scheme Booklet, and providing all reasonable assistance and information to the Independent Expert to enable it to do so.
- (d) **(Approval of draft for ASIC)** As soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the Target Board, or of a committee of the Target Board appointed for this purpose, is convened to consider, and if thought fit, approve, that draft as being in a form appropriate for provision to ASIC for review.
- (e) **(Liaison with ASIC)** As soon as practicable after the date of this Agreement, providing an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 6.1(d), to ASIC for review and approval for the purposes of section 411(2) of the Corporations Act and:
 - (i) liaising with ASIC during the period of ASIC's consideration of that draft of the Scheme Booklet; and
 - (ii) keeping Bidder reasonably informed of any material matters raised by ASIC in relation to the Scheme Booklet, and using all reasonable endeavours in co-operation with Bidder to resolve any such matters.
- (f) **(Approval of Scheme Booklet)** As soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the Target Board, or of a committee of the Target Board appointed for this purpose, is convened to consider, and if thought fit, approve, the Scheme Booklet for dispatch to Target Shareholders, subject to the approval of the Court.
- (g) **(Registration)** Requesting ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act.
- (h) **(Section 411(17)(b) statement)** Applying to ASIC for a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme.

- (i) **(Engage suitable counsel)** Engaging suitable senior counsel to represent Target in all Court proceedings related to the Scheme.
- (j) **(Regulatory notifications)** Without limiting any obligation of Target under any other provision of this Agreement, lodging with each Government Agency within the relevant time periods all necessary documentation and filings in relation to the Scheme and the transactions contemplated by this Agreement.
- (k) **(Court direction)** Applying to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting.
- (l) **(Scheme Meeting)** Taking all reasonable steps necessary to comply with the orders of the Court, including dispatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting.
- (m) **(Target Scheme Information)** Taking all reasonable steps to ensure that the Target Scheme Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the Dispatch Date.
- (n) **(Shareholder support)** Promoting to the Target Shareholders the merits of the Scheme including soliciting proxy votes in favour of the Scheme (subject to any applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules, requiring that the Scheme Booklet provide a balanced assessment of the Scheme to Target Shareholders including the advantages and disadvantages of the Scheme).
- (o) **(Target new information)** Providing to Target Shareholders any further or new information which arises after the Dispatch Date and prior to the Scheme Meeting which is necessary to ensure that the information contained in the Scheme Booklet is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (p) **(Court approval)** If Target Shareholder Approval is obtained at the Scheme Meeting, applying (and, to the extent necessary, re-applying) to the Court for orders approving the Scheme.
- (q) **(Documents)** Consulting to the extent reasonable with Bidder in relation to the content of the material documents required for the purposes of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders).
- (r) **(Lodge copy of Court order)** Lodging an office copy of the Court order approving the Scheme (if made) with ASIC no later than 10.00 am on the next Business Day after the order is made.
- (s) **(Registration)** If the Scheme becomes Effective, determining entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme and executing proper instruments of transfer of, and effecting and entering in the Register the transfer of, the Scheme Shares to Bidder under the Scheme on the Implementation Date.
- (t) **(Register information)** Providing Bidder and its share registry with all information necessary, or reasonably requested, in order to assist Bidder to pay the Scheme Consideration.
- (u) **(Listing)** Take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including

the Implementation Date, including making any appropriate applications to ASX and ASIC.

- (v) **(Incentive plans)** Subject to Court approval of the Scheme but with effect from the Effective Date, suspend all of its executive and employee incentive plans that will or could result in securities being granted to Target Group Officers.

Bidder's obligations

- 6.2 Bidder must take all reasonably necessary steps to implement the Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and substantially in accordance with the Timetable. This includes:
- (a) **(Deed Poll)** Executing the Deed Poll.
 - (b) **(Bidder Scheme Information)** Preparing and providing to Target, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Scheme Information.
 - (c) **(Independent Expert's report)** Providing all reasonable assistance and information to the Independent Expert in connection with the preparation of its report for inclusion in the Scheme Booklet.
 - (d) **(Representation)** Procuring that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all things and take all steps within its power that may be necessary to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for Bidder to be represented at those Court hearings, apply for that leave.
 - (e) **(Review of Scheme Booklet)** As soon as reasonably practicable after delivery, reviewing the drafts of the Scheme Booklet prepared by Target and providing comments on those drafts in good faith.
 - (f) **(Approval of draft for ASIC)** As soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the appropriate decision-making body of Bidder is held to consider approving those sections of the draft that relate to Bidder as being in a form appropriate for provision to ASIC for review.
 - (g) **(Approval of Scheme Booklet)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the appropriate decision-making body of Bidder is held to consider approving those sections of the Scheme Booklet that relate to Bidder as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court.
 - (h) **(Accuracy of Bidder Scheme Information)** Before the Dispatch Date, confirming to Target the accuracy of the Bidder Scheme Information contained in the Scheme Booklet, and consenting to the inclusion of that information in the form and context in which it appears in the Scheme Booklet, in each case subject to Bidder being reasonably satisfied as to those matters.
 - (i) **(Bidder Scheme Information)** Taking all reasonable steps to ensure that the Bidder Scheme Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the Dispatch Date.

- (j) **(Bidder new information)** Providing to Target any further or new information about Bidder which arises after the Dispatch Date and prior to the Scheme Meeting which is necessary or reasonably required by Target to ensure that the Bidder Scheme Information disclosed to Target Shareholders is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (k) **(Scheme Consideration)** If the Scheme becomes Effective, paying the Scheme Consideration in accordance with clause 4.2.
- (l) **(Regulatory notifications)** Without limiting any obligation of Bidder under any other provision of this Agreement, lodging with each Government Agency within the relevant time periods all necessary documentation and filings required by law to be lodged by Bidder in relation to the Scheme and the transactions contemplated by this Agreement.
- (m) **(Reasonable assistance)** Without limiting any obligation of Bidder under any other provision of this Agreement, providing any assistance or information reasonably requested by Target in relation to the Scheme.
- (n) **(Updates)** Promptly providing Target with details of:
 - (i) any material developments with respect to the Bidder's funding arrangements to facilitate payment of the Scheme Consideration in accordance with clause 4.2; and
 - (ii) any communications between Bidder or its Representatives and any Filipino Government Agency that directly or indirectly relate to the FTAA.

Timetable

- 6.3 Each of Target and Bidder must use its reasonable endeavours to perform its obligations (and procure its Representatives to assist in that performance) substantially in accordance with the Timetable.

Conduct of appeals

- 6.4 If the Court refuses to grant an order convening the Scheme Meeting or approving the Scheme, then Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision. If, in the opinion of senior counsel obtained by either party within five Business Days of the Court's decision, there are reasonable prospects of successfully appealing the Court's decision then:
- (a) Target must appeal the Court's decision, the cost of which is to be borne equally by Target and Bidder; and
 - (b) the Sunset Date will be extended to 29 May 2015 (or any earlier date agreed to by Target and Bidder) to account for the period for determination of the appeal on an expedited basis.

Recommendation of the Independent Directors

- 6.5 Subject to clause 6.6, each Independent Director in office at the relevant time must, in the public announcement, Scheme Booklet and in any other public statements made after execution of this Agreement and relating to the Scheme recommend that Target Shareholders vote in favour of all resolutions to be proposed at the Scheme Meeting in relation to the Scheme and approve the Scheme, without any qualification other than a qualification that the recommendation is subject to:

- (a) no Superior Proposal being made; and
 - (b) the Independent Expert opining in its final report to Target for inclusion in the Scheme Booklet that the Scheme is in the best interests of Target Shareholders.
- 6.6 The Independent Directors may only make a public statement or take any other action that qualifies their support of the Scheme or contradicts, or subsequently change, withdraw or modify, the recommendation referred to in clause 6.5 where:
- (a) the Independent Expert does not opine in its final report to Target for inclusion in the Scheme Booklet that the Scheme is in the best interests of Target Shareholders;
 - (b) the Independent Directors determine, after Bidder's rights under clause 13.8 have been exhausted, that a Competing Proposal constitutes a Superior Proposal; or
 - (c) the Independent Directors have determined in good faith and acting reasonably after consultation with Target's independent legal and financial advisers, that making the recommendation referred to in clause 6.5 may constitute a breach of the Independent Directors' fiduciary duties or statutory obligations, provided that this clause 6.6(c) is not relied upon to deny Bidder its rights under clauses 13.7 to 13.9.
- 6.7 The Scheme Booklet will state that each Independent Director who holds Target Shares, or on whose behalf Target Shares are held, intends to vote in favour of the Scheme, without any qualification other than a qualification that the intention is subject to:
- (a) no Superior Proposal being made; and
 - (b) the Independent Expert opining in its final report to Target for inclusion in the Scheme Booklet that the Scheme is in the best interests of Target Shareholders.
- 6.8 Target represents and warrants to Bidder that it has been advised by each Independent Director in office at the date of this Agreement that he will act in accordance with clause 6.5, 6.6 and 6.7.

Conduct of business

- 6.9 Subject to clause 6.10, during the Exclusivity Period, Target must, and must use reasonable endeavours to ensure that each other Target Group Member:
- (a) conducts its businesses, and maintains its assets, in all material respects in the ordinary and proper course of business consistent with past practice, in substantially the same manner as previously conducted;
 - (b) complies in all material respects with all material contracts to which a Target Group Member is a party, and with laws, authorisations and licenses applicable to each Target Group Member;
 - (c) does not take or fail to take any action that constitutes a Target Prescribed Event or that could reasonably be expected to result in a Target Prescribed Event; and
 - (d) does not deal in or dispose of, nor agree to deal in or dispose of, any direct or indirect interest in SMI.
- 6.10 Without limiting clause 6.9 but subject to clause 6.11, Target must not, and must procure that each Target Group Member does not, from the date of this Agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):

- (a) acquire or dispose of (or offer or agree to acquire or dispose of) one or more assets, entities or business (or any interest in one or more entities, businesses or assets), or enter into (or offer or agree to enter into) any agreement that would require expenditure or the foregoing of revenue, for an amount (or, in the case of a disposal, with a book value) in aggregate exceeding \$1 million, or make an announcement in relation to such acquisition, disposal, offer or agreement;
 - (b) enter into, or offer to enter into or agree to enter into, any joint venture or partnership, grant any licence or option or right of first refusal over any of its property or assets or an interest in its property or assets, or make an announcement in relation to such an entry, offer or agreement;
 - (c) agree or consent to any work plan of SMI in relation to the year 2015 or any subsequent year;
 - (d) enter into any onerous or long term contract or commitment or incur a contingent liability except in the ordinary course of business or proposes or agrees to do any of those things;
 - (e) pay any fee to any adviser where such fee is contingent on the acquisition by Bidder of the Scheme Shares (other than as disclosed in writing to Bidder before the date of this Agreement);
 - (f) increase the remuneration of, pay any bonus to, issue any securities or options to or otherwise vary the employment agreements with, or pay any termination payment (other than as provided for in an existing employment contract in place as at the date of this agreement and a copy of which has previously been provided as part of the Target Due Diligence Information) or accelerate the rights to benefits of any kind of, any of its Officers or consultants; or
 - (g) take or omit to take any action which would breach any agreement in relation to SMI or trigger any rights of pre-emption in respect of Target's direct or indirect shareholding in SMI.
- 6.11 Any restriction on conduct which is imposed in clause 6.9 does not apply to the extent that:
- (a) the conduct, or the intention to carry out the conduct, was fairly disclosed in the Target Due Diligence Information on or before the date of this Agreement; or
 - (b) the conduct is required to be undertaken by a Target Group Member in connection with the Scheme or this Agreement; or
 - (c) the conduct is approved in writing by Bidder, which approval must not be unreasonably withheld or delayed.

Access to management reports

- 6.12 Subject to clause 6.13, from the date of this Agreement until the Implementation Date, Target will provide Bidder with:
- (a) copies of Target's monthly management reports (including details of any material matters relating to SMI); and
 - (b) reasonable access to management of Target Group Members as requested by Bidder.
- 6.13 Nothing in clause 6.12 obliges Target to provide to Bidder or its Representatives any information:

- (a) concerning the Independent Directors' consideration of the Scheme; or
- (b) which would breach an obligation of confidentiality to any person or any applicable privacy laws.

Appointing directors

- 6.14 As soon as practicable on the Implementation Date after the transfer of the Scheme Shares to Bidder under the terms of the Scheme, subject to receipt by Target of signed consents to act from the nominee directors of Bidder, Target must:
- (a) take all actions necessary to cause the appointment of the nominees of Bidder to the Target Board and the board of directors of each other Target Group Member and SMI, provided that in the case of appointments to the board of SMI, Target's obligations under this clause 6.14(a) will be limited to taking actions permitted under the terms of the joint venture agreements regulating Target's investment in SMI; and
 - (b) procure that those directors on the Target Board and the board of directors of each other Target Group Member and SMI which Bidder nominates resign with effect from the Implementation Date, with the exception of any director that has entered into a written agreement with Bidder prior to the Implementation Date to remain as a director of a Target Group Member and/or SMI (as the case may be).

7 Warranties

Target Warranties

- 7.1 Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the other Bidder Indemnified Parties) at the date of this Agreement and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:
- (a) each Target Group Member is a corporation validly existing under the laws of its place of incorporation;
 - (b) each Target Group Member has not had:
 - (i) a liquidator or provisional liquidator appointed;
 - (ii) a receiver, receiver and manager, trustee, controller, official manager or similar officer appointed;
 - (iii) an administrator appointed, whether under Part 5.3A of the Corporations Act or otherwise; or
 - (iv) an application made for the appointment of an administrator, liquidator or provisional liquidator over all or part of its business, assets or revenues and no Target Group Member nor any of their respective boards of directors have passed a resolution for any such appointment;
 - (v) an application made for its winding up;
 - (c) it has taken all necessary corporate action to authorise entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement and to carry out the transactions contemplated by this Agreement;
 - (d) it has full corporate power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;

- (e) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy, subject to laws generally affecting creditors' rights and the principles of equity;
- (f) this Agreement does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which any Target Group Member is a party or is subject or by which any Target Group Member is bound;
- (g) it has obtained all necessary consents and approvals to enable it to enter into this Agreement and will have obtained, prior to 8.00 am on the Second Court Date, all necessary consents and approvals to enable it to perform this Agreement;
- (h) as at the date of this Agreement its issued equity securities comprise:
 - (i) 1,203,146,194 ordinary shares; and
 - (ii) 2,730,000 Options all of which have vested, provided that pursuant to the terms of issue of these Options, if Target Shareholders approve the Scheme by the requisite majorities in the Scheme Meeting, any Option that has not been exercised within 7 days of the date of the Scheme Meeting will automatically lapse,

and there are no other options, preference shares of any class, rights, performance rights, shares, convertible notes or other securities on issue, and no Target Group Member is under any obligation to issue and has not granted any person the right to call for the issue of any such securities in it;

- (i) the Target Scheme Information:
 - (i) will comply in all material respects with the requirements of all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules; and
 - (ii) be provided on the understanding that each of the Bidder Indemnified Parties will rely on that information for the purposes of preparing the Bidder Scheme Information and implementing the Scheme;
- (j) as at the Dispatch Date, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Scheme Information and the Independent Expert's report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (k) it is not in breach of its continuous or periodic financial disclosure obligations under the Listing Rules or the Corporations Act and, subject to the announcement of the Scheme and the execution of this Agreement in accordance with clause 9.1, as at the date of this Agreement Target is not relying on Listing Rule 3.1A to withhold any information from disclosure under the Listing Rules; and
- (l) between 1 July 2014 and the date of this Agreement, Target has not taken any action, or failed to take any action which if it had taken, or failed to take (as applicable) after the date of this Agreement it would have been a breach of clause 6.9 or 6.10 of this Agreement (subject to any matter permitted under clause 6.11) or constituted a Target Prescribed Event;
- (m) no Target Prescribed Event has occurred;

- (n) so far as the Target Board and the Senior Management of any Target Group Member are aware after due and diligent inquiry of each Target Group Member, as at the date of this Agreement, there is no material breach by any Target Group Member or SMI of:
 - (i) any Australian or foreign law or regulation applicable to them (or order of any Australian or foreign Regulatory Authority having jurisdiction over them); or
 - (ii) any material contract to which it is a party;
 which breach (alone or together with any other breaches of law or contract) has or could reasonably be expected to have the effect of causing:
 - (iii) any material contract to be terminable or terminated; or
 - (iv) a Target Group Member or SMI to be restricted in conducting its business, or to be subject to criminal liability or penalty;
- (o) other than as disclosed to Bidder in writing prior to the execution of this agreement, no Officer or consultant of the Target Group is entitled to receive any bonus, incentive or other entitlement (whether or not subject to the satisfaction of conditions) except to the extent that the bonus, incentive or other entitlement comprises base cash salary or wages or remuneration of a non-executive director from an amount previously approved by Target shareholders or statutory leave entitlements;
- (p) as at the date of this Agreement, neither ASIC nor ASX (as applicable) has made a determination against any Target Group Member for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules; and
- (q) all responses by Target and its Representatives to Bidder's requests for information in connection with its due diligence investigations of the Target Group have been provided in good faith and the Target and its Representatives have not intentionally withheld any information, the withholding of which would mislead the Bidder in relation to the Target Group and its operations, save for any information that Target has been restricted from providing to Bidder by virtue of any obligations of confidence owed to third parties.

Target indemnity

- 7.2 Target agrees with Bidder (on Bidder's own behalf and separately as trustee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all Claims, liabilities and loss which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of the representation and warranty in clause 7.1(i).
- 7.3 For the purpose of clause 7.2, Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of each of the Bidder Indemnified Parties. Target acknowledges that Bidder and each of the Bidder Indemnified Parties may bring action directly against Target in respect of any breach of the Target Warranties.

Bidder Warranties

- 7.4 Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the other Target Indemnified Parties) at the date of this Agreement and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) no Bidder Prescribed Event has occurred;
- (c) it has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement and to carry out the transactions contemplated by this Agreement;
- (d) it has full corporate power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
- (e) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy, subject to laws generally affecting creditors' rights and the principles of equity;
- (f) this Agreement does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it, or any of its Subsidiaries, is a party or is subject or by which it or any of its Subsidiaries is bound;
- (g) it has obtained all necessary consents and approvals to enable it to enter into this Agreement and will have obtained, prior to 8.00 am on the Second Court Date, all necessary consents and approvals to enable it to perform this Agreement. However, it does not represent or warrant that the Regulatory Consent will necessarily be obtained;
- (h) as at the Dispatch Date, the Bidder Scheme Information, in the form and context in which it appears in the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (i) the Bidder Scheme Information provided to Target in accordance with clause 6.2(i) for inclusion in the Scheme Booklet will:
 - (i) comply in all material respects with the requirements of all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules; and
 - (ii) be provided on the understanding that each of the Target Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (j) all Bidder Scheme Information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's report to be prepared and completed will be provided on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's report for inclusion in the Scheme Booklet; and
- (k) Bidder will be able to pay the Scheme Consideration in accordance with the terms of this Agreement and the Deed Poll, having regard to the fact that prior to the date of this Agreement, Bidder has obtained a letter from its financiers confirming that, no less than two business days in Manila before the date of the Scheme Meeting, the Bidder's financiers will issue an irrevocable standby letter of credit under which, conditional on only the satisfaction of the conditions contained in clause 3.1, it will pay to Target an amount sufficient to satisfy, and in satisfaction of, Bidder's

obligation to pay the Scheme Consideration in accordance with its obligations under this Agreement and the Deed Poll.

Bidder indemnity

- 7.5 Bidder agrees with Target (on Target own behalf and separately as trustee for each of the other Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all Claims, liabilities and loss which any of the Target Indemnified Parties may suffer or incur by reason of any breach of the representation and warranty in clause 7.4(h).
- 7.6 For the purposes of clause 7.5, Target is taken to be acting as agent and trustee on behalf of and for the benefit of each of the Target Indemnified Parties. Bidder acknowledges that Target and each of the Target Indemnified Parties may bring action directly against Bidder in respect of any breach of the Bidder Warranties.

Release and Survival

- 7.7 Each party:
- (a) releases its rights against, and will not make any Claim against, any past or present Representative of any other party in relation to anything done or purported to be done in connection with the Scheme, any transaction contemplated by or representation or warranty given in this Agreement, any information provided to it by another party or in relation to its execution or delivery this Agreement to the extent that the past or present Representative has acted in good faith and has not engaged in any wilful misconduct. Nothing in this clause 7.7(a) excludes any liability that may arise from wilful misconduct or bad faith on the part of any person; and
 - (b) holds the releases in clause 7.7(a) in respect of its past and present Representatives as trustee for those Representatives.
- 7.8 Each representation and warranty in clauses 7.1 and 7.4:
- (a) is severable;
 - (b) will survive termination of this Agreement; and
 - (c) is given with the intent that liability under it is not confined to breaches which are discovered before the date of termination of this Agreement.

Survival of indemnities

- 7.9 Each indemnity in this Agreement (including those in clauses 7.2 and 7.5):
- (a) is severable;
 - (b) is a continuing obligation;
 - (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Agreement; and
 - (d) will survive termination of this Agreement.

No other warranties or reliance

- 7.10 Each party acknowledges that no other party (nor any person acting on that other party's behalf) has made any warranty, representation or other inducement to it to enter into this Agreement, except for the representations and warranties expressly set out in this Agreement.

- 7.11 Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any warranty, representation or other inducement by or on behalf of any other party, except for any warranty or representation expressly set out in this Agreement.
-

8 Termination

Termination for breach

- 8.1 Without prejudice to any other rights of termination under this Agreement, either party may terminate this Agreement by giving the other party written notice at any time before 8.00 am on the Second Court Date if:
- (a) either:
 - (i) the other party is in material breach of any material term of this Agreement;
or
 - (ii) there has been a breach of a representation or warranty given by the other party under clauses 7.1 or 7.4 (as applicable) on or before the Second Court Date and:
 - (A) the breach was of a kind that, had it been disclosed to the party prior to its entry into this agreement, could reasonably be expected to have resulted in that party either not entering into this agreement or entering into it on materially different terms; or
 - (B) the breach amounts to, results in, or discloses anything, that could reasonably be expected to represent a material adverse effect on the relevant party's business, financial affairs or prospects; and
 - (b) the party wishing to terminate this Agreement has given the other party a written notice setting out details of the breach and stating its intention to terminate this Agreement; and
 - (c) the breach has not been remedied within 20 Business Days (or any shorter period ending immediately before 8.00 am on the Second Court Date) from the date the notice under clause 8.1(b) is given.

Automatic termination

- 8.2 This Agreement will terminate automatically without the need for action by any party in the event that:
- (a) subject to paragraph (b), Target Shareholder Approval is not obtained at the Scheme Meeting; or
 - (b) if clause 3.4 requires Target to apply for the order referred to in that clause, the order is refused with the result that the Scheme is not approved by Target Shareholders.

Termination by Target or Bidder

- 8.3 Either of Bidder or Target may terminate this Agreement by giving the other party written notice if:
- (a) the Court refuses to grant an order convening the Scheme Meeting or approving the Scheme and either:

- (i) Bidder and Target fail to agree on conducting an appeal under clause 6.4 within five Business Days of the Court's decision and Target is not otherwise obliged to conduct an appeal in accordance with clause 6.4; or
 - (ii) Bidder and Target agree to conduct an appeal under clause 6.4 within five Business Days of the Court's decision but the appeal is unsuccessful; or
 - (b) the Scheme is not approved by the Court under section 411(4)(b) of the Corporations Act on or before the Sunset Date.
- 8.4 This Agreement may not be terminated by a party under clause 8.3 if the relevant event described in clause 8.3 is a result of (either alone or together with other events or circumstances) an act or omission by that party or any of its Related Bodies Corporate that results in a breach of this Agreement.

Termination following change of recommendation

- 8.5 Without prejudice to any other rights of termination under this Agreement:
- (a) Bidder may terminate this Agreement by giving the Target written notice at any time before 8.00 am on the Second Court Date if an Independent Director fails to make the recommendation referred to in clause 6.5 or withdraws his recommendation that Target Shareholders vote in favour of the Scheme or publicly announces that he no longer supports the Scheme; and
 - (b) Target may terminate this Agreement by giving the Bidder written notice at any time before 8.00 am on the Second Court Date if all of the Independent Directors have changed, withdrawn or modified their recommendation (as set out in clause 6.5) in accordance with clause 6.6.

Effect of termination

- 8.6 If either Target or Bidder terminates this Agreement under clauses 3 or 8, this Agreement and the parties' obligations under it cease, other than obligations under this clause and clauses 7.2, 7.3, 7.5, 7.6, 7.7, 7.9, 9, 10, 12, 13, 15 and 16 which will survive termination.
- 8.7 Termination of this Agreement under clauses 2 or 8 does not affect any accrued rights of a party in respect of a breach of this Agreement prior to termination.

9 Public announcements

Announcement of the Scheme

- 9.1 Immediately after the execution of this Agreement, Target must issue a public announcement in a form previously agreed to in writing by Bidder.

Public announcements

- 9.2 Except as permitted under clause 9.1, neither party may make a public announcement about this Agreement (including any termination of this Agreement), the Scheme Booklet or the Scheme unless:
- (a) the other party has given its prior approval to form of the announcement (acting reasonably); or
 - (b) applicable law or the Listing Rules requires an announcement to be made, subject to clause 9.4.

- 9.3 Each party must use its reasonable endeavours to participate constructively and promptly with respect to the approvals and consultation contemplated by clauses 9.2 and 9.4.

Required disclosure

- 9.4 If applicable law or the Listing Rules require a party to make an announcement or disclosure about the subject of this Agreement, the Scheme Booklet or the Scheme, that party may only do so after it has given the other party prior notice (of at least one Business Day if possible, subject to complying with all applicable laws and the Listing Rules) and consulted (to the fullest extent reasonable in the circumstances) with the other party about the form and content of the announcement or disclosure.

Statements on termination

- 9.5 Without limiting clause 9.2, the parties must act in good faith and use all reasonable endeavours to issue an agreed statement or announcement in respect of any termination of this Agreement.

10 Confidentiality

Confidentiality Deed

- 10.1 The parties acknowledge and agree that they are bound by the terms of the Confidentiality Deed except that if there is any conflict or inconsistency between the terms of this Agreement and the Confidentiality Deed, the terms of this Agreement will prevail to the extent of the conflict or inconsistency.

11 Conduct of Court proceedings

- 11.1 Nothing in this Agreement gives any party any right or power to make undertakings to the Court for or on behalf of another party without that party's written consent.
- 11.2 Each party agrees to give all undertakings to the Court in all Court proceedings which it is reasonably required to give (on an individual basis) to obtain Court approval and confirmation of the Scheme as contemplated by this Agreement.

12 Break Fee

Break Fee

- 12.1 Subject to clauses 12.2, 12.3, 12.4 and 12.5, if:
- (a) at any time before the Scheme Meeting is held (or is scheduled to be held), the Target Board, or any of the Independent Directors, fails to recommend the Scheme to Target Shareholders or publicly withdraws, qualifies or varies its recommendation of the Scheme in a manner adverse to Bidder, other than:
 - (i) in circumstances where Target is entitled to terminate this Agreement under clause 3.13 or 8.1; or
 - (ii) as a consequence of the Independent Expert concluding in its report (or in any revised or supplemental report) that the Scheme is not in the best interests of Target Shareholders; or
 - (b) a Competing Proposal is announced during the Exclusivity Period and either:

- (i) at any time during the Exclusivity Period or on or prior to the date six months after end of the Exclusivity Period, the proponent of the Competing Proposal acquires control of Target (within the meaning of section 50AA of the Corporations Act), or voting power or an economic interest in more than 50% of Target Shares or acquires or obtains an economic interest in more than 50% (by value) of the assets (excluding cash), cash or businesses of the Target Group; or
 - (ii) the Competing Proposal is recommended by any Independent Director;
 - (c) Bidder validly terminates this Agreement in accordance with clause 8.1; or
 - (d) the condition in clause 3.1(g) is breached or not satisfied prior to 8.00 am on the Second Court Date and Bidder terminates this agreement as a result,
- then Target must pay to Bidder the amount of \$2,800,000 (**Break Fee**).

Qualifications

- 12.2 The Break Fee is not payable by Target if the Scheme becomes Effective.
- 12.3 The Break Fee is not payable by Target if Target validly terminates this Agreement in accordance with clause 8.1.
- 12.4 The Break Fee is only payable once and the maximum amount payable by Target under clause 12.1 is the amount of the Break Fee.

Compliance with law

- 12.5 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 Break Fee required to be paid under clause 12.1 (**Impugned Amount**):
 - (a) is unlawful;
 - (b) involves a breach of directors' duties; or
 - (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,
 then:
 - (d) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and
 - (e) if Bidder has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

Acknowledgments

- 12.6 Each of Target and Bidder acknowledge that:
 - (a) it has received legal advice on this Agreement and the operation of this clause; and
 - (b) it considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause in order to secure the significant benefits to it (and its shareholders) which would result from the implementation of the Scheme.
- 12.7 Each of Target and Bidder acknowledge that:

- (a) if Target and Bidder enter into this Agreement and the Scheme is subsequently not implemented in any of the circumstances described in clause 12.1, Bidder will incur significant costs; and
 - (b) in the circumstances referred to in clause 12.7(a), Bidder has requested that provision be made for the payment of the Break Fee, without which Bidder would not have entered into this Agreement.
- 12.8 Target acknowledges that the Break Fee has been calculated to reimburse Bidder for the following:
- (a) fees for legal and financial advice in planning and pursuing the Scheme;
 - (b) reasonable opportunity costs incurred in engaging in the Scheme and in not engaging in other alternative acquisitions or strategic initiatives;
 - (c) costs of management and directors' time in planning and pursuing the Scheme;
 - (d) out-of-pocket expenses incurred in planning and pursuing the Scheme; and
 - (e) costs associated with the financing arrangements in respect of the Scheme,
- in each case, incurred by Bidder directly or indirectly as a result of having entered into this Agreement and pursuing the Scheme.
- 12.9 Each of Target and Bidder acknowledge that:
- (a) the amount of fees, costs and losses referred to in clause 12.8 is inherently unascertainable and that, even after termination of this Agreement, the costs will not be able to be accurately ascertained; and
 - (b) the amount of the Break Fee is a genuine and reasonable pre-estimate of the amount of fees, costs and losses referred to in clause 12.8, it being acknowledged by the parties that the costs would most likely be in excess of the amount of the Break Fee.

Payment – Break Fee

- 12.10 Any Break Fee which is payable under this clause must be paid within five Business Days of receipt of a written demand from Bidder. The demand may only be made after the occurrence of an event referred to in clause 12.1.

Exclusive remedy

- 12.11 Despite any other provision of this Agreement, where the Break Fee becomes payable to Bidder under this Agreement (or would be payable if a demand was made), Bidder cannot make any Claim against Target or any other Target Indemnified Party in relation to any loss to Bidder or any Bidder Indemnified Party arising from the Scheme not proceeding, any event or occurrence referred to in clause 12.1, and any and all liability of Target and the Target Indemnified Parties in relation to any breach by Target of its obligations under this Agreement or any breach of any Target Warranty.

Regulatory intervention

- 12.12 If any Australian regulatory body (including ASIC or the Takeovers Panel) or an Australian court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this Agreement to that extent, and
 - (b) it will not result in a breach of this Agreement or termination of the transactions contemplated by it.
-

13 Exclusivity

Termination of existing discussions

13.1 Target warrants that, as at the date of this Agreement:

- (a) other than in relation to the discussions with Bidder in connection with the Scheme and this Agreement, it has, and its Representatives have, ceased any existing discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
- (b) it has requested the return of Target's confidential information in accordance with the terms of any relevant confidentiality agreement entered into with a third party for the purposes of facilitating due diligence investigations on the Target Group in connection with a Competing Proposal or Target's direct or indirect shareholding in SMI (before the date of this Agreement).

13.2 During the Exclusivity Period, Target must:

- (a) diligently enforce all its rights under each confidentiality agreement entered into in connection with a Competing Proposal (before the date of this Agreement), including its rights to require the return of confidential information as referred to in clause 13.1(b), and keep Bidder fully informed of its progress in doing so;
- (b) as soon as reasonably practicable, ensure that the electronic data room access granted to any third party prior to the date of this Agreement in connection with a Competing Proposal is withdrawn; and
- (c) not grant any waivers or agree to any amendments under any confidentiality agreements entered into in connection with a Competing Proposal (before the date of this Agreement).

No shop

13.3 During the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, solicit, invite, initiate or encourage any Competing Proposal or any enquiries, negotiations or discussions with any third party that concern, or that could reasonably be expected to lead to, an expression of interest, offer or proposal from any person in relation to a Competing Proposal.

No talk

13.4 Subject to clause 13.10, during the Exclusivity Period, Target must not and must ensure that its Representatives do not, except with the prior written consent of Bidder:

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
 - (b) communicate an intention to do any of these things,
- in relation to, or which may reasonably be expected to lead to:

- (c) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Proposal; or
- (d) the Scheme not proceeding.

No due diligence

- 13.5 Subject to clause 13.10, during the Exclusivity Period, Target must not and must ensure that its Representatives do not, except with the prior written consent of Bidder, make available to any other person or permit any other person to receive any non-public information relating to the Target Group, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

Notification of Competing Proposals

- 13.6 Subject to clause 13.10, during the Exclusivity Period, if a Competing Proposal is put to Target (**Other Proposal**) then Target must promptly inform Bidder of that fact, the identity of the person or persons involved in the Other Proposal and the key terms of the Other Proposal. For the purposes of this clause, a material variation to an Other Proposal which has previously been notified to Bidder is taken to be a new Other Proposal to which this clause applies.

Target's response to a Competing Proposal and Bidder's right to respond

- 13.7 If Target receives a Competing Proposal and, as a result, any Independent Director proposes to change his recommendation of the Scheme (so that he can recommend the Competing Proposal), Target must give Bidder 3 Business Days prior notice (**relevant notice**) of such proposed change to the Independent Director's recommendation of the Scheme.
- 13.8 If Target gives a relevant notice to Bidder under clause 13.7, Bidder will have the right, but not the obligation, at any time during the period of three Business Days following the receipt of the relevant notice, to amend the terms of its proposed acquisition of the Scheme Shares including but not limited to increasing the Scheme Consideration or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the Independent Directors must review the Counter Proposal in good faith. If the Independent Directors determine that the Counter Proposal would be no less favourable to Target and Target Shareholders than the Competing Proposal (having regard to the matters noted in clause 13.10(b)), then Target and Bidder must use their best endeavours to agree the amendments to this Agreement that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Target must use its best endeavours to procure that the Independent Directors recommend the Counter Proposal to Target's Shareholders (which recommendation may be expressed to be given in the absence of a Superior Proposal and subject to the Independent Expert opining to the effect that the Counter proposal is in the best interests of Target Shareholders) and not recommend the applicable Competing Proposal.
- 13.9 For the purposes of clause 13.7 and 13.8, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

Fiduciary out

- 13.10 The restrictions in clauses 13.4, 13.5, 13.6, 13.7 and 13.8 do not apply to the extent they restrict Target or the Target Board from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 13) provided that:

- (a) the Competing Proposal is bona fide and is made in writing by or on behalf of a person that the Target Board considers is of reputable commercial standing; and
- (b) the Target Board has determined in good faith, after consulting with Target's advisors to the Scheme, that:
 - (i) the Competing Proposal is reasonably capable of being valued and completed within a reasonable timeframe; and
 - (ii) the Competing Proposal would, if completed substantially in accordance with its terms or on terms as may reasonably be expected to flow from the Competing Proposal, be more favourable to the Target Shareholders than the Scheme, after taking into account all aspects of the Competing Proposal (including its terms and conditions) and the person making it; and
 - (iii) taking or failing to take the action with respect to the Competing Proposal would, or would be reasonably likely to, involve a breach of the fiduciary or statutory obligations of any Target director.

14 Costs and stamp duty

Costs

- 14.1 Subject to clause 12 and 14.2, each party must bear its own costs and expenses (including professional fees and stamp duty) incurred by it in connection with the negotiation, preparation and execution of this Agreement and the implementation or attempted implementation of the Scheme.

Stamp duty

- 14.2 Bidder must pay all stamp duty and any related fines or penalties in respect of this Agreement, the Deed Poll and the acquisition of the Scheme Shares in accordance with the Scheme.

15 Notices

Requirements

- 15.1 All notices must be:
- (a) in legible writing and in English;
 - (b) addressed to the recipient at the address or fax number set out below or to any other address or fax number that a party may notify to the other:

to Target:

Address:	Level 3, 411 Collins Street, Melbourne VIC 3000
Attention:	Richard Laufmann
Fax no:	+61 3 8620 5888

with a copy to Baker & McKenzie:

Address:	Level 19, 181 William Street, Melbourne VIC 3000
Attention:	Richard Lustig / Simon De Young
Fax no:	+61 3 9614 2103

to Bidder:

Address:	2286 Chino Roces Avenue, Makati City, Philippines
Attention:	Nicasio Alcantara
Fax no:	+63 2 816 7636

with a copy to Minter Ellison Lawyers:

Address:	88 Phillip Street, Sydney NSW 2000
Attention:	Costas Condoleon
Fax no:	+61 2 9921 8174

- (c) signed by the party making the communication or by a person duly authorised by that party; and
- (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia), email or facsimile.

Receipt of notices

15.2 Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by pre-paid post, three Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting; or
- (c) if sent by fax, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole fax was sent to the recipient's fax number;

but if a notice is served by hand, or is received by the recipient's fax, on a day that is not a Business Day, or after 5.00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00 am (recipient's local time) on the next Business Day.

16 General

Entire agreement

- 16.1 To the extent permitted by law, in relation to the subject matter of this Agreement, this Agreement:
- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (b) supersedes any prior agreement (whether or not in writing) between the parties other than the Confidentiality Deed.

Further assurances

- 16.2 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

No merger

- 16.3 The rights and obligations of the parties do not merge on completion of any transaction contemplated under this Agreement. They survive the execution and delivery of any assignment or other document entered into to implement any transaction contemplated under this Agreement.

Assignment

- 16.4 A party cannot assign, novate or otherwise transfer or deal in any other way with any of its rights or obligations under this Agreement without the other party's prior written consent.

Invalid or unenforceable provisions

- 16.5 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

Waiver and exercise of rights

- 16.6 A waiver by a party of a provision of, or of a right under, this Agreement is only binding on the party granting the waiver if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.
- 16.7 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 16.8 A single or partial exercise of a right by a party does not preclude another exercise of that right or the exercise of another right.
- 16.9 The failure to exercise, or the delay in exercising, a right does not operate as a waiver or prevent the party so failing or exercising its right from later doing so.

Amendment

- 16.10 Except as expressly provided to the contrary in this Agreement, this Agreement may only be amended by a document signed by or on behalf of each party.

Counterparts

- 16.11 This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

Rights cumulative

- 16.12 Except as expressly provided to the contrary in this Agreement or as permitted by law, the rights, powers and remedies provided in this Agreement are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Agreement.

Consents or approvals

- 16.13 A party may give its approval or consent conditionally or unconditionally, or withhold its approval or consent, in its absolute discretion unless this Agreement expressly provides otherwise.

Severability

- 16.14 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions of this Agreement.

GST

- 16.15 Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- 16.16 To the extent that any supply made by a party to another party (**Recipient**) under or in connection with this Agreement is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 16.17 The amount of GST payable in accordance with clause 16.16 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

Governing law and jurisdiction

- 16.18 This Agreement is governed by the laws of Victoria, Australia.
- 16.19 Each party irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, Australia; and
 - (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Service of process

16.20 Each party agrees that a document required to be served in proceedings about this Agreement may be served:

- (a) by being delivered to or left at its address for service of notices under clauses 15.1 and 15.2; or
- (b) in any other way permitted by law.

Execution

Executed as an agreement.

Signed by
Indophil Resources NL
by a director and secretary/director:



Signature of director

RICHARD LAUMANN
Name of director (please print)



Signature of ~~director~~/secretary

KAY DONEHUE
Name of ~~director~~/secretary (please print)

Signed by
Alsons Prime Investments Corporation
by its authorised representative:

Signature of authorised representative

Name of authorised representative (please print)

Execution

Executed as an agreement.

Signed by
Indophil Resources NL
by a director and secretary/director:

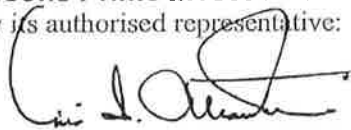
Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

Signed by
Alsons Prime Investments Corporation
by its authorised representative:



Signature of authorised representative

NICASIO I. ALCANTARA

Name of authorised representative (please
print)

Annexure 1

Timetable

Event	Indicative date
Provide Scheme Booklet to ASIC for review and comment	Late October 2014
First Court Date	Mid November 2014
Scheme Meeting	Mid December 2014
Second Court Date (SCD)	As soon as possible after the Scheme Meeting
Notify ASX of Court approval of the Scheme	SCD
Effective Date (lodge office copy of Court order approving the Scheme with ASIC)	SCD + one Business Day
Target Shares suspended from trading on ASX	SCD + one Business Day
Scheme Record Date	SCD + five Business Days
Implementation Date	SCD + eight Business Days

Annexure 2

Deed Poll

Deed Poll

By Alsons Prime Investments Corporation
in favour of each Scheme Shareholder

Baker & McKenzie
ABN 32 266 778 912
Level 19
181 William Street
Melbourne VIC 3000
Australia
www.bakermckenzie.com
Email - simon.deyoung@bakermckenzie.com
Email - richard.lustig@bakermckenzie.com
Email - riccardo.troiano@bakermckenzie.com

Title	Deed Poll
Date	[<i>date</i>]
By	Alsons Prime Investments Corporation of 2286 Chino Roces Avenue, Makati City, Philippines (Bidder)
in favour of	Each holder of issued fully paid ordinary shares in Indophil Resources NL (ACN 076 318 173) (Target) as at the Scheme Record Date (other than the Excluded Shareholders) (Scheme Shareholders)

Recitals

- A Target and Bidder are parties to a Scheme Implementation Agreement dated [*insert*] (**Scheme Implementation Agreement**).
- B Bidder is entering into this Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform certain of its obligations under the Scheme Implementation Agreement and certain steps attributed to it under the Scheme, including ensuring that the Scheme Consideration is paid to Scheme Shareholders.
- C The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Bidder in exchange for the Scheme Consideration.

Operative provisions

1 Definitions and interpretation

- 1.1 Words and phrases defined in the Scheme have the same meanings in this Deed Poll unless the context requires otherwise.
- 1.2 Clause 1.2 of the Scheme applies to the interpretation of this Deed Poll except that references to "this document" in that clause are to be read as references to "this Deed Poll".

2 Nature of Deed Poll

- 2.1 Bidder acknowledges 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 a party to it; and
 - (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of the directors and officers of Target (jointly and severally) as its agent and attorney to enforce this Deed Poll against Bidder.

3 Conditions precedent and termination

Conditions precedent

- 3.1 Bidder's obligations under clause 4 are subject to the Scheme becoming Effective.

Termination

- 3.2 Bidder's obligations under this Deed Poll will automatically terminate and the terms of this Deed Poll will have no further force or effect if:
- (a) the Scheme Implementation Agreement is terminated in accordance with its terms prior to the occurrence of the Effective Date for the Scheme; or
 - (b) the Scheme does not become Effective on or before the Sunset Date.

Consequences of termination

- 3.3 If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available:
- (a) Bidder is released from its obligations to further perform this Deed Poll; and
 - (b) each Scheme Shareholder retains the rights it has against Bidder in respect of any breach of this Deed Poll which occurred before its termination.

4 Payment of Scheme Consideration

- 4.1 Subject to clause 3, Bidder undertakes to each Scheme Shareholder:
- (a) by no later than the Business Day before the Implementation Date, to deposit in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder into an Australian dollar denominated trust account operated by Target as trustee for the Scheme Shareholders; and
 - (b) to undertake all other actions attributed to it under, and otherwise comply with its obligations in, the Scheme as if it were a party to the Scheme,
- subject to and in accordance with the provisions of the Scheme.

5 Representations and warranties

- 5.1 Bidder represents and warrants that:
- (a) it is a corporation validly existing under the laws of the place of its incorporation;
 - (b) 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) it has taken all necessary corporate action to authorise the 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; and
 - (d) this Deed Poll is valid and binding upon it and enforceable against it in accordance with its terms.

6 Continuing obligations

- 6.1 This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:
- (a) Bidder having fully performed its obligations under this Deed Poll; and
 - (b) the termination of this Deed Poll under clause 3.2.

7 Notices

7.1 Any notice or other communication given to Bidder under or in connection with this Deed Poll must be:

- (a) in legible writing and in English;
- (b) addressed to Bidder at the address or fax number set out below:

Attention:	Nicasio Alcantara
Address:	2286 Chino Roces Avenue, Makati City, Philippines
Fax no:	+63 2 816 7636

with a copy to Minter Ellison Lawyers:

Address:	88 Phillip Street, Sydney NSW 2000
Attention:	Costas Condoleon
Fax no:	+61 2 9921 8174

- (c) signed by the sender or a person duly authorised by the sender; and
- (d) sent to Bidder by hand, prepaid post (airmail if to or from a place outside Australia) or fax.

7.2 Without limiting any other means by which a party may be able to prove that a notice has been received by Bidder, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of Bidder;
- (b) if sent by pre-paid post, three Business Days (if posted within Australia to an address in Australia) or 10 Business Days (if posted from one country to another) after the date of posting; or
- (c) if sent by fax, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole fax was sent to Bidder's fax number,

but if a notice is served by hand, or is received by Bidder's fax, on a day that is not a Business Day, or after 5.00 pm (Bidder's local time) on a Business Day, the notice will be considered to have been received by Bidder at 9.00 am (Bidder's local time) on the next Business Day.

8 General

Stamp duty

8.1 Bidder:

- (a) must pay all stamp duty (if any) and any related fines, penalties and interest in respect of the Scheme and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under this Deed Poll; and

- (b) indemnifies each Scheme Shareholder on demand against any liability arising from failure to comply with clause 8.1(a).

Waiver

- 8.2 Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed Poll by any party 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.
- 8.3 No waiver of a breach of any term of this Deed Poll will operate as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.
- 8.4 Nothing in this Deed Poll obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.
- 8.5 A provision of or right under this Deed Poll may not be waived except in writing signed by the person granting the waiver.

Variation

- 8.6 A provision of this Deed Poll may not be varied unless the variation is agreed to in writing by Bidder and Target, and the Court indicates that the variation would not of itself preclude approval of the Scheme. A variation which complies with this clause is effective when Bidder enters into a further deed poll in favour of each Scheme Shareholder giving effect to the amendment.

Rights cumulative

- 8.7 The rights, powers and remedies of Bidder and of each Scheme Shareholder under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.

Assignment

- 8.8 The rights and obligations of Bidder and of each Scheme Shareholder under this Deed Poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity.

Further assurances

- 8.9 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Deed Poll and the transactions contemplated by this Deed Poll.

Governing law and jurisdiction

- 8.10 This Deed Poll is governed by the laws of Victoria.
- 8.11 Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Execution

Executed as a deed.

Signed by
Alsons Prime Investments Corporation
by its authorised representative:

Signature of authorised representative

Name of authorised representative (please
print)

Annexure 3

Scheme of Arrangement

Scheme of Arrangement

Indigo

**The holders of fully paid ordinary shares in
Indophil Resources NL as at the Scheme
Record Date, other than Excluded
Shareholders**

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Scheme of Arrangement

pursuant to section 411 of the *Corporations Act 2001* (Cth)

between **Indophil Resources NL** (ACN 076 318 173) of Level 3, 411 Collins Street, Melbourne VIC 3000 (**Target**)

and **The holders of fully paid ordinary shares in Target as at the Scheme Record Date, other than Excluded Shareholders**

Operative provisions

1 Definitions and interpretation

Definitions

1.1 In this document, unless the context requires otherwise:

ADI has the meaning given in the *Banking Act 1959* (Cth)

ASIC means the Australian Securities and Investments Commission.

ASPL means ASX Settlement Pty Ltd (ABN 49 008 504 532).

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

ASX Settlement Rules means the ASX Settlement Operating Rules.

Bidder means Alsons Prime Investments Corporation of 2286 Chino Roces Avenue, Makati City, Philippines.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria.

CHESS means the Clearing House Electronic Subregister System of share transfers operated by ASPL.

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

Court means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act agreed in writing by Bidder and Target.

Deed Poll means the deed poll in respect of the Scheme executed by Bidder in favour of each Scheme Shareholder.

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the *Corporations Act*, of the Scheme Order.

Effective Date means the date on which an office copy of the Scheme Order approving the Scheme is lodged with ASIC.

Excluded Shareholder means Bidder and any Related Bodies Corporate of Bidder that is a Target Shareholder and which Bidder has categorised as an "Excluded Shareholder" via a notice in writing provided to Target at least five Business Days prior to the First Court Date (as defined in the Scheme Implementation Agreement)).

Implementation Date means the third Business Day after the Scheme Record Date, or such other day as Bidder and Target agree in writing.

Register means the register of shareholders of Target.

Registered Account has the meaning given in clause 4.6(a).

Registered Address means the address of each Scheme Shareholder as recorded in the Register as at the Scheme Record Date.

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

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and Scheme Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Target and Bidder.

Scheme Consideration means \$0.30 in respect of each Scheme Share.

Scheme Implementation Agreement means the scheme implementation agreement between Target and Bidder.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme.

Scheme Order means the orders of the Court approving the Scheme, with or without modification, under section 411(4)(b) of the Corporations Act.

Scheme Record Date means 7.00 pm on the fifth Business Day after the Effective Date.

Scheme Share means a Target Share held by a Scheme Shareholder as at the Scheme Record Date.

Scheme Shareholder means each person who holds a Target Share as at the Scheme Record Date (excluding each Excluded Shareholder).

Second Court Date means the first day on which the Court hears the application for the Scheme Order, or if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application is heard.

Sunset Date means:

- (a) 5.00pm on 27 February 2015 or, if clause 6.4 of the Scheme Implementation Agreement applies, 29 May 2015 (or any earlier date agreed between Target and Bidder in accordance with clause 6.4(b) of the Scheme Implementation Agreement); or
- (b) such other date and time as agreed in writing between Target and Bidder.

Target Share means an issued fully paid ordinary share in Target.

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

Target Share Registry means Computershare Investor Services Pty Limited (ACN 078 279 277).

Trust Account has the meaning given in clause 4.5.

Interpretation

1.2 In this document:

- (a) unless the context requires otherwise, a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document or instrument is a reference to that document or instrument as amended, consolidated, supplemented, novated or replaced;
 - (iv) to a clause, paragraph, Schedule or Annexure is to a clause, paragraph, Schedule or Annexure of or to this document;
 - (v) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
 - (vi) to any time is to Melbourne time;
 - (vii) to "\$" is to the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect interpretation of this document;
- (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

2 Preliminary

Target

- 2.1 Target is a public company limited by shares, incorporated in Australia and taken to be registered in Victoria. Its registered office is at Level 3, 411 Collins Street, Melbourne VIC 3000.
- 2.2 Target is admitted to the official list of ASX and Target Shares are quoted on ASX.
- 2.3 As at *[insert]*, Target's issued equity securities comprise:
 - (a) [1,203,146,194] ordinary shares; and
 - (b) [2,370,000] options all of which have vested, provided that pursuant to the terms of issue of these options, if Target Shareholders approve the Scheme by the requisite majorities in the Scheme Meeting, any option that has not been exercised within 7 days of the date of the Scheme Meeting will automatically lapse.

Bidder

- 2.4 Bidder is a company limited by shares, incorporated in the Philippines. Its registered office is at 2286 Chino Roces Avenue, Makati City, Philippines.

Effect of Scheme

- 2.5 If the Scheme becomes Effective:
- (a) Bidder will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with the terms of the Scheme;
 - (b) all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Bidder and Target will enter Bidder in the Register as the holder of the Scheme Shares.
 - (c) in consideration of the transfer of the Scheme Shares, subject to Bidder depositing funds into the Trust Account in accordance with clause 4.5, Target will pay or procure the payment of the Scheme Consideration to each Scheme Shareholder on behalf of the Bidder in accordance with the Scheme.

Scheme Implementation Agreement

- 2.6 Target and Bidder have entered into the Scheme Implementation Agreement which sets out the terms on which Target and Bidder have agreed to implement the Scheme.

Deed Poll

- 2.7 The Scheme attributes actions to Bidder but does not itself impose an obligation on Bidder to perform those actions. Bidder has executed the Deed Poll in favour of each Scheme Shareholder under which it has covenanted, subject to the Scheme becoming Effective, to perform certain steps attributed to it under the Scheme and to do all things necessary or desirable to implement the Scheme, including to pay or procure the payment of Scheme Consideration.

3 Conditions precedent

Conditions precedent to Scheme

- 3.1 The Scheme is conditional on and will have no force or effect until, the satisfaction of each of the following conditions precedent:
- (a) all of the conditions precedent set out in clause 3.1 of the Scheme Implementation Agreement, other than those in clauses 3.1(c) and 3.1(d), having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement, before 8:00 am on the Second Court Date or such other time specified in that condition precedent;
 - (b) as at 8.00 am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms;
 - (c) the Court making the Scheme Order;
 - (d) any other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme, and which are acceptable to Target and Bidder, having been satisfied; and

- (e) the Scheme Order (and, if applicable, any orders under section 411(6)) of the Corporations Act approving the Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the Sunset Date,

and the provisions of clauses 4, 5 and 6 will not come into effect unless and until each of these conditions precedent has been satisfied.

Certificate in relation to conditions precedent

- 3.2 Prior to or at the Court hearing on the Second Court Date, Target and Bidder will each provide to the Court a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent to the Scheme other than those in clauses 3.1(c), 3.1(d) and 3.1(e), have been satisfied or waived.
- 3.3 The giving of a certificate by each of Target and Bidder under clause 3.2 will, in the absence of manifest error, be conclusive evidence of the satisfaction or waiver of the conditions precedent referred to in the relevant certificate.

Termination

- 3.4 Without limiting any rights under the Scheme Implementation Agreement, if the Scheme Implementation Agreement is terminated in accordance with its terms before the Scheme becomes Effective, each of Bidder and Target are released from:
 - (a) any further obligation to take steps to implement the Scheme; and
 - (b) any liability with respect to the Scheme.

Sunset Date

- 3.5 The Scheme will lapse and have no further force or effect if the Effective Date has not occurred on or before the Sunset Date.

4 Implementation of Scheme

Lodgement of Scheme Order

- 4.1 Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Scheme Order as soon as practicable, and in any event by no later than 5.00 pm on the first Business Day after the date on which the Court makes that Scheme Order.

Transfer of Scheme Shares

- 4.2 Subject to the Scheme becoming Effective and the payment of the Scheme Consideration in accordance with clauses 4.5 to 4.6, on the Implementation Date the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Shareholder by:
 - (a) Target delivering to Bidder a duly completed share transfer form executed on behalf of the Scheme Shareholders (which may be a master share transfer form) to transfer all the Scheme Shares to Bidder;
 - (b) Bidder duly executing this transfer form and delivering this transfer form to Target for registration; and
 - (c) to the extent applicable, Target effecting a valid transfer of Scheme Shares under section 1074D of the Corporations Act.

- 4.3 As soon as practicable after receipt of the transfer form or completion of the transfer procedure, Target must enter the name and address of Bidder in the Register as the holder of the Scheme Shares.
- 4.4 To the extent permitted by law, the Scheme Shares will be transferred to Bidder free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind.

Payment of Scheme Consideration

- 4.5 Target must use its best endeavours to procure that by no later than 10.00 am on the Implementation Date, Bidder deposits in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder, in an Australian dollar denominated trust account operated by Target (**Trust Account**) as trustee for the Scheme Shareholders (except that any interest on the amount will be for the account of Bidder).
- 4.6 Subject to funds having been deposited in accordance with clause 4.5, on the Implementation Date, Target must pay or procure the payment from the Trust Account to each Scheme Shareholder an amount equal to the number of Scheme Shares held by the Scheme Shareholder multiplied by the Scheme Consideration by:
- (a) making or procuring a deposit into an account with an ADI in Australia notified by the Scheme Shareholder to Target and recorded in or for the purposes of payment of dividends in the Register as at the Scheme Record Date (**Registered Account**); or
 - (b) if Target has not been notified by the Scheme Shareholder of a Registered Account, despatching or procuring the despatch to the Scheme Shareholder of a cheque, by pre-paid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by pre-paid airmail post) in an envelope addressed to the Registered Address as at the Record Date. In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and be sent to the holder whose name appears first in the Register as at the Scheme Record Date.

Unclaimed Consideration

- 4.7 If:
- (a) in the case of a deposit under clause 4.6(a), the deposit is rejected or refunded or a Registered Account which has previously been notified is no longer valid; or
 - (b) in the case of the despatch of a cheque under clause 4.6(b), a cheque properly despatched by or on behalf of Target is:
 - (i) returned to Target (or its agents) as undelivered;
 - (ii) not presented by a Scheme Shareholder within six months after the Implementation Date; or
 - (iii) Target reasonably believes that a Scheme Shareholder is not known at a Scheme Shareholder's Registered Address,

then Target may cancel the relevant cheque and credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target to be held until the Scheme Shareholder claims the amount, or the amount is dealt with in accordance with any applicable unclaimed moneys legislation. An amount credited to the account is to be treated as having been paid to the Scheme Shareholder when credited to the account. Target must maintain

records (for the minimum period required by applicable law) of the amounts paid, the people who are entitled to the amounts, and any transfers of the amounts.

5 Dealings in Target Shares

Determination of Scheme Shareholders

- 5.1 Each Scheme Shareholder will be entitled to participate in the Scheme.
- 5.2 For the purpose of determining who is a Scheme Shareholder, dealings in Target Shares will only be recognised if:
 - (a) in the case of dealings of the type to be effected by CHESS, the transferee is registered in the Register as the holder of the relevant Target Shares by the Scheme Record Date; and
 - (b) in all other cases, share transfer forms in registrable form or transmission applications in respect of those dealings are received by the Target Share Registry by the Scheme Record Date.

Target's obligation to register

- 5.3 Target must register any registrable transfers or transmission applications of the kind referred to in clause 5.2(b) by the Scheme Record Date.

Transfers after the Scheme Record Date

- 5.4 If the Scheme becomes Effective, a Target Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Target Shares or any interest in them after the Scheme Record Date (other than a transfer to Bidder in accordance with the Scheme and any subsequent transfers by Bidder or its successors in title).
- 5.5 Target will not accept for registration, nor recognise for any purpose, any transfer or transmission application in respect of Target Shares received after the Scheme Record Date (other than a transfer to Bidder in accordance with the Scheme and any subsequent transfers by Bidder or its successors in title).

Maintenance of Register

- 5.6 For the purpose of determining entitlements to the Scheme Consideration, Target will, until the Scheme Consideration has been paid or dispatched to Scheme Shareholders, maintain or procure the maintenance of the Register in accordance with this clause 5. The Register in this form will solely determine entitlements to the Scheme Consideration.

Effect of certificates and holding statements

- 5.7 From the Scheme Record Date, each certificate or holding statement for Scheme Shares will cease to have any effect as a document of title in respect of the Scheme Shares or otherwise (other than holding statements in favour of Bidder and its successors in title).
- 5.8 Each entry on the Register as at the Scheme Record Date (other than entries in respect of the Excluded Shareholders and their successors in title) will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

Information to be made available to Bidder

- 5.9 As soon as reasonably practicable after the Scheme Record Date and in any event at least three Business Days before the Implementation Date, Target will give to Bidder or as it

directs or procure that Bidder be given or as it directs, details of the name, address and number of Scheme Shares held by each Scheme Shareholder as shown in the Register at the Scheme Record Date in the form Bidder reasonably requires.

6 Quotation of Target Shares

- 6.1 Target will apply to ASX for suspension of trading of Target Shares on ASX with effect from the close of trading on the Effective Date.
- 6.2 If the Scheme has been fully implemented in accordance with its terms, on the date determined by Bidder, Target will apply to ASX for the termination of the official quotation of Target Shares on ASX and to have Target removed from the official list of ASX.

7 General Scheme provisions

Appointment of Target as agent and attorney

- 7.1 Each Scheme Shareholder, without the need for any further act, irrevocably appoints Target and each of the directors and officers of Target (jointly and severally) as its agent and attorney for the purpose of doing all things and executing all deeds, instruments, transfers and other documents that may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it, including but not limited to:
 - (a) enforcing the Deed Poll against Bidder;
 - (b) in the case of Scheme Shares in a CHESS holding:
 - (i) causing a message to be transmitted to ASPL in accordance with the ASX Settlement Rules to transfer the Scheme Shares held by the Scheme Shareholder from the CHESS subregister of Target to the issuer sponsored subregister operated by Target or the Target Share Registry at any time after Bidder has paid or procured the payment of the Scheme Consideration which is due under this Scheme to Scheme Shareholders; and
 - (ii) completing and signing on behalf of Scheme Shareholders any required form of transfer of Scheme Shares;
 - (c) in the case of Scheme Shares registered in the issuer sponsored subregister operated by Target or the Target Share Registry, completing and signing on behalf of Scheme Shareholders any required form of transfer; and
 - (d) in all cases, executing any document or doing any other act necessary or desirable to give full effect to this Scheme and the transactions contemplated by it, including executing a proper instrument of transfer of Scheme Shares for the purposes of section 1071B of the Corporations Act (which may be a master transfer of all the Scheme Shares),

and Target accepts such appointment. Target, as attorney and agent 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 Target may sub-delegate its functions, authorities or powers under clause 7.1 as agent and attorney of each Scheme Shareholder to any or all of its directors or officers.

Agreement by Scheme Shareholders

- 7.3 Each Scheme Shareholder agrees to:

- (a) the transfer of its Scheme Shares together with all rights and entitlements attaching to those Scheme Shares to Bidder in accordance with the terms of the Scheme; and
- (b) the variation, cancellation or modification (if any) of the rights attached to its Target Shares constituted by or resulting from the Scheme.

Warranty by Scheme Shareholders

7.4 Each Scheme Shareholder is deemed to have warranted to Target, and is deemed to have authorised Target to warrant to Bidder as agent and attorney for the Scheme Shareholder, that:

- (a) all of its Scheme Shares (including all rights and entitlements attaching to them) transferred to Bidder under the Scheme will, on the date of the transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind; and
- (b) it has full power and capacity to sell and transfer its Scheme Shares (including all rights and entitlements attaching to them) to Bidder.

Title to Scheme Shares

7.5 On and from the Implementation Date, subject to Bidder depositing the Scheme Consideration in accordance with clause 4.5, and pending registration by Target of Bidder in the Register as the holder of the Scheme Shares, Bidder will be beneficially entitled to the Scheme Shares.

Appointment of Bidder as sole proxy

7.6 On and from the Implementation Date and until registration by Target of Bidder in the Register as the holder of the Scheme Shares, each Scheme Shareholder:

- (a) without the need for any further act irrevocably appoints Bidder and each of its directors, officers and secretaries (jointly and each of them separately) as its agent and attorney to appoint an officer or agent nominated by Bidder as its sole proxy and where applicable, corporate representative to:
 - (i) attend shareholders' meetings of Target;
 - (ii) exercise the votes attached to the Scheme Shares registered in the name of the Scheme Shareholder; and
 - (iii) sign any shareholders' resolution of Target;
- (b) undertakes not to attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than under clause 7.6;
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in this clause 7.6, Bidder and each of the directors, officers and secretaries of Bidder may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

7.7 Target undertakes in favour of each Scheme Shareholder that it will appoint the officer or agent nominated by Bidder as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 7.6(a).

Scheme alterations and conditions

- 7.8 If the Court proposes to approve the Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act, Target may, by its counsel or solicitors, and with the consent of Bidder, consent to those alterations or conditions on behalf of all persons concerned, including, for the avoidance of doubt, all Scheme Shareholders.

Effect of Scheme

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

No liability when acting in good faith

- 7.10 Neither Target nor Bidder, nor any of their respective officers or agents, will be liable to a Target Shareholder for anything done or omitted to be done in the performance of the Scheme in good faith.

Notices

- 7.11 Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to 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 Target's registered office or at the Target Share Registry.
- 7.12 The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

Further assurances

- 7.13 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this Scheme and the transactions contemplated by this Scheme.

Costs and stamp duty

- 7.14 Bidder will pay all stamp duty (if any) and any related fines, penalties and interest payable on the transfer by Scheme Shareholders of the Scheme Shares to Bidder.

Governing law and jurisdiction

- 7.15 This Agreement is governed by the laws of Victoria. Each party irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of Victoria; and
 - (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.