



## Takeover Offer for Amex Resources

- **All cash takeover offer of \$0.50 per Amex share**
- **37.50% premium to the 20 day VWAP up to and including 10 March 2017**
- **Offer provides shareholders with certain value and liquidity for their Amex shares**
- **Amex Directors unanimously recommend that shareholders ACCEPT the Offer, in the absence of a superior proposal**

The Board of Amex Resources Limited (**Amex**) wishes to advise that it has received an off-market takeover offer from Waratah International (Asia) Limited (**Waratah**), under which Waratah will offer to acquire all of the issued shares of Amex (the **Offer**). Waratah is a private company of which Amex's major shareholder, Mr Kenny Zhang, is the sole director and shareholder,

Amex shareholders who accept the Offer will be entitled to receive A\$0.50 cash per Amex share, subject to the fulfilment of the conditions of the Offer.

The Offer values the entire issued share capital of Amex at approximately \$54 million and represents:

- 38.89% premium to the last traded price of Amex shares of A\$0.36 on 8 March 2017, being the last day on which Amex shares traded prior to the announcement of the Offer; and
- 37.50% premium to the 20 day volume weighted average price of Amex shares of A\$0.3636 up to and including 10 March 2017, being the last trading day for Amex shares prior to the announcement of the Offer.

Amex's Board of Directors unanimously recommends that Amex shareholders accept the Offer, in the absence of a superior proposal. Each Amex director has indicated that they intend to accept the Offer in respect of all the Amex shares they own or control, in the absence of a superior proposal.

In recommending the Offer, the Directors had regard to the fact that the all-cash Offer provides Amex shareholders with certain value and liquidity for their Amex shares compared to the risks and uncertainty associated with remaining an Amex shareholder.

In particular, the Directors considered Amex's likely ability to refinance amounts owing to its lenders, or alternatively to raise additional finance through debt or equity to meet Amex's exploration and development commitments and continue as a going concern. However, there is no guarantee that the Company will be able to obtain lower-cost financing in the current economic climate, should the Offer be unsuccessful.

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The Offer is subject to a number of defeating conditions, including:

- a 90% minimum acceptance condition;
- the Amex optionholders agreeing to the cancellation of their options and the Mba Delta Project Contractor agreeing to the cancellation of its conditional call option approved by shareholders on 17 August 2016, in each case, for no monetary consideration;
- no material adverse change affecting Amex and the continuation of its business in the ordinary course; and
- no prescribed occurrences.

Further details of the defeating conditions to the Offer are set out in Annexure A.

To facilitate the Offer being put to Amex shareholders, Amex has agreed to provide Waratah with customary deal protection provisions as well as undertaking to pay a \$300,000 break fee in certain circumstances if the Offer is unsuccessful. Further details in respect to these arrangements are set out in Annexures B and C.

Detailed information in relation to the Offer will be set out in a Bidder's Statement and Target's Statement, which will be lodged with ASIC and ASX and sent to Amex shareholders shortly. The Offer will be open for acceptance by Amex shareholders for one month, unless extended.

For further information, please contact Amex's Managing Director Matthew Collard on +61 8 9480 0455.

## Annexure A

### Defeating Conditions

Words defined in Annexure B have the same meaning when used in this Annexure A.

The Offer and each Takeover Contract is subject to the following Conditions that between 13 March 2017 and the earlier of the end of the Offer Period and the date on which Waratah declares the Offer free from such Conditions:

**(a) Minimum Acceptance Condition**

Waratah and its associates have Relevant Interests in at least 90% of the aggregate of all the Amex Shares on issue (thereby becoming entitled to compulsorily acquire all of the outstanding Amex Shares under Part 6A.1 of the Corporations Act).

**(b) Cancellation of Amex Options (described in the table below)**

Each Amex Optionholder agreeing with Amex to the cancellation of their Amex Options for no monetary consideration.

Options	Exercise price (A\$)	Expiry date
1,000,000	\$1.40	4 May 2017
500,000	\$1.40	4 May 2017
500,000	\$1.40	22 July 2017
6,000,000	\$1.10	9 January 2018
6,000,000	\$1.10	9 January 2018
2,000,000	\$0.80	4 February 2019
10,000,000	\$0.80	16 November 2019
1,000,000	\$0.80	16 November 2019
2,000,000	\$0.80	16 November 2019
1,500,000	\$0.80	30 December 2020
500,000	\$0.80	30 December 2020
3,000,000	\$0.80	17 August 2020
1,000,000	\$0.80	17 August 2020

**(c) Cancellation of Mba Delta Project Contractor's Conditional Call Option**

CCCC First Harbour Consultants Co., Ltd agreeing with Amex to the cancellation of the option granted by Amex to it under the lump sum procurement, construction and management contract for the Mba Delta Project as security for the payment of the final milestone payment of US\$15,000,000 under that contract, for the issue of Amex Shares (to a limit of 19.9% of Amex's issued capital) which was approved by Amex Shareholders in general meeting on 17 August 2016, for no monetary consideration;

**(d) Conduct of business**

Amex Group conducting its business in the ordinary and usual course of business and:

- (i) operating those businesses consistent with past practice, in substantially the same manner as previously conducted;
- (ii) using reasonable endeavours to preserve their relationships with third parties having material business dealings with them, and to retain the services of all key employees;
- (iii) using reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (iv) using reasonable endeavours to comply in all material respects with all material contracts to which the Amex Group is a party, and with laws, authorisations and licenses applicable to each member of the Amex Group
- (v) not taking or failing to take any action that constitutes a Prescribed Occurrence or that could reasonably be expected to result in a Prescribed Occurrence; and
- (vi) not taking or failing to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

**(e) No Material Adverse Change**

No Material Adverse Change occurs, is announced or becomes known to Waratah (whether or not it becomes public) where

**Material Adverse Change** means an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to Waratah (whether it becomes public or not) after 13 March 2017, and which (individually or when aggregated with other events, occurrences or matters) has or could reasonably be expected to have:

- (i) the result that the business of Waratah is unable to be carried on substantially in the way it is carried on as at 13 March 2017; or
- (ii) one or more of the following effects (in each case determined in accordance with Accounting Standards):
  - (A) for an event, occurrence or matter with a one-off impact – a diminution in the net assets of the Amex Group by A\$10,000,000 million or more; or

- (B) in all other cases – the incurring of any liabilities, costs or expenses (contingent or otherwise) where the quantum exceeds A\$10,000,000 million (on a pre-tax basis),

other than events, occurrences or matters:

- (iii) resulting directly from changes in general economic and political conditions or changes that affect the resources industry generally; or
- (iv) fairly disclosed to the ASX before 13 March 2017 or which may arise from an event, occurrence or matter which was so disclosed.

**(f) Prescribed Occurrences**

None of the following events occurring:

- (i) Amex converting all or any of its shares into a larger or smaller number of shares;
- (ii) Amex or a Subsidiary resolving to reduce its share capital in any way;
- (iii) Amex or a Subsidiary:
  - (A) entering into a buy-back agreement; or
  - (B) resolving to approve the terms of a buy-back agreement under section 257C (1) or 257D (1) of the Corporations Act;
- (iv) Amex or a Subsidiary issuing shares, or granting an option over any of its shares, or agreeing to make such an issue or grant such an option;
- (v) Amex or a Subsidiary issuing, or agreeing to issue, convertible notes;
- (vi) Amex or a Subsidiary disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (vii) Amex or a Subsidiary charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- (viii) Amex or a Subsidiary resolving to be wound up;
- (ix) a liquidator or provisional liquidator of Amex or of a Subsidiary being appointed;
- (x) a court making an order for the winding up of Amex or of a Subsidiary;
- (xi) an administrator of Amex, or of a Subsidiary, being appointed under section 436A, 436B or 436C of the Corporations Act;
- (xii) Amex or a Subsidiary executing a deed of company arrangement; or
- (xiii) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of Amex or of a Subsidiary.

## **Annexure B**

### **Terms applicable to a Superior Offer**

In this Annexure B:

**Competing Proposal** means any proposal, offer or transaction by a third party that, if completed, would mean:

- (a) a person would acquire a relevant interest or voting power in 20% or more of the Amex Shares;
- (b) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 20% or more of the Amex Shares;
- (c) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or assets or property of, Amex;
- (d) a person would acquire control of Amex;
- (e) a person may otherwise acquire, or merge with, Amex (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (f) Amex will issue, on a fully diluted basis, 20% or more of its issued share capital as consideration for the assets or share capital or another person,

or any proposal by Amex to implement any reorganisation of capital. Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Offer Period** means the period commencing on 13 March 2017 and ending at 5pm Perth time on the last day of the offer period as described in Waratah's Bidder's Statement lodged with ASIC in respect to the Cash Offer, as that period may be extended by Waratah.

**Cash Offer** has the meaning given to that term in the letter to which this Annexure is annexed.

**Superior Proposal** means a bona fide Competing Proposal which the Amex Board determines, acting in good faith and in order to satisfy what the Amex Board reasonably considers to be its fiduciary or statutory duties, would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Amex Shareholders than the Cash Offer having regard to matters including consideration, conditionality, funding, certainty and timing.

#### **1.1 No existing discussions**

Amex represents and warrants to Waratah that, as at 13 March 2017:

- (a) it is not a party to any agreement entered into for the purpose of facilitating a Competing Proposal; and

- (b) it is not participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

## **1.2 No-shop**

During the Offer Period, Amex must not directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any third party in relation to, or that could reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of these things.

## **1.3 No-talk**

Subject to clause 1.7, Amex must not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
- (b) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by Amex or that person has publicly announced the Competing Proposal.

## **1.4 No due diligence**

During the Offer Period, except with the prior written consent of Waratah, Amex must not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage, or (subject to clause 1.7) facilitate or permit, any person (other than Waratah or its associates) to undertake due diligence investigations in respect of Amex, its businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (b) subject to clause 1.7, make available to any person (other than Waratah or its associates) or permit any such person to receive any non-public information relating to Amex, its businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

## **1.5 Notification of approaches**

- (a) During the Offer Period, Amex must promptly notify Waratah in writing of:
  - (i) any approach, inquiry or proposal made by any person to Amex to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
  - (ii) any request made by any person to Amex for any information relating to Amex, its businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

- (b) Subject to clause 1.7, a notice given under clause 1.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
  - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 1.5(a)(i), or who made the relevant request for information referred to in clause 1.5(a)(ii); and
  - (ii) the material terms and conditions (including price, conditions precedent, timetable and break fee free (if any)) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) During the Offer Period, Amex must promptly provide Waratah with:
  - (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,  
  
any non-public information relating to Amex, its businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to Waratah.

#### **1.6 Amex's response to Rival Acquirer and Waratah's right to respond**

- (a) If Amex is permitted by virtue of clause 1.7 to engage in activity that would otherwise breach any of clauses 1.3, 1.4(a), 1.4(b) and 1.5(b), Amex must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) on substantially similar terms to that signed between Amex and Kenny Zhang and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 1.6(b).
- (b) If Amex receives a Competing Proposal and as a result, any Amex Director proposes to either:
  - (i) change, withdraw or modify his recommendation of the Cash Offer; or
  - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than the confidentiality agreement contemplated by clause 1.6(a)),  
  
(**Relevant Action**) Amex must ensure that no Amex Director does so:
    - (iii) unless the Competing Proposal is bona fide; and
    - (iv) until each of the following has occurred:
      - (A) the Amex Directors have made the determination contemplated by clause 1.7(b) in respect of that Competing Proposal;
      - (B) Amex has given Waratah written notice (**Relevant Notice**) of the Amex Director's proposal to take the Relevant Action (subject to Waratah's



rights under clause 1.6(d)), including details of the grounds on which the Amex Directors propose to take such action;

- (C) subject to clause 1.6(c), Amex has given Waratah all information that would be required by clause 1.5(b) as if it was not subject in any way to clause 1.7;
  - (D) Waratah's rights under clause 1.6(d) have been exhausted; and
  - (E) the Amex Directors have made the determination contemplated by clause 1.7(b) in respect of that Competing Proposal after Waratah's rights under clause 1.6(d) have been exhausted and after evaluation of any Counter Proposal.
- (c) Prior to giving Waratah the information under clause 1.6(b)(iv)(C), Amex must advise the Rival Acquirer that the Rival Acquirer's name and other details which may identify the Rival Acquirer will be provided by Amex to Waratah on a confidential basis.
- (d) If Amex gives a Relevant Notice to Waratah, Waratah will have the right, but not the obligation, at any time during the period of 3 Business Days following the receipt of the Relevant Notice, to amend the terms of its Cash Offer including increasing the amount of consideration offered or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the Amex Directors must review the Counter Proposal in good faith. If the Amex Directors determine that the Counter Proposal would be more favourable, or at least no less favourable, to Amex and the Amex Shareholders than the Competing Proposal (having regard to the matters noted in clause 1.7(b)), then Amex and Waratah must use their best endeavours to agree the amendments to this letter that are reasonably necessary to reflect the Counter Proposal and to enter into an amended letter to give effect to those amendments and to implement the Counter Proposal, and Amex must use its best endeavours to procure that the Amex Directors recommend the Counter Proposal to the Amex Shareholders and not recommend the applicable Competing Proposal.
- (e) For the purposes of this clause 1.6, 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.

## 1.7 Fiduciary out

The restrictions in clauses 1.3, 1.4(a) and 1.4(b) and the obligations in clause 1.5(b) do not apply to the extent they restrict Amex or any Amex Director 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 1) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the Amex Board considers is of reputable commercial standing; and
- (b) the Amex Board has determined in good faith, after receiving written advice from Amex's external Australian legal adviser practising in the area of corporate law that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the Amex Board, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal.

## **Annexure C**

### **Terms applicable to a Break Fee**

Words defined in Annexure B have the same meaning when used in this Annexure C.

#### **1.1 Waratah declaration**

Waratah represents and warrants to Amex that it would not have agreed to make the Cash Offer without the benefit of these provisions and it would not have entered into and continued the negotiations leading up to the Cash Offer unless Waratah had a reasonable expectation that Amex would agree to them.

#### **1.2 Amex Acknowledgments**

(a) Amex acknowledges that Waratah has incurred:

- (i) significant external advisory costs;
- (ii) some internal costs of a similar kind (including director's time costs, risk management costs and capital costs);
- (iii) out-of-pocket expenses; and
- (iv) reasonable opportunity costs incurred by Waratah in pursuing the Cash Offer or in not pursuing other alternative acquisitions or strategic initiatives,

in relation to the Cash Offer and will incur further costs during the Offer Period if the Cash Offer is not successful (**Costs**).

(b) Amex represents and warrants that:

- (i) it has received legal advice on these provisions and their operation; and
- (ii) it considers these provisions to be fair and reasonable and that it is appropriate to agree to their terms in order to secure the significant benefits to it (and the Amex Shareholders) resulting from the Cash Offer.

#### **1.3 Agreement on Costs**

The parties acknowledge that the amount of the Costs is inherently unascertainable. As a genuine and reasonable pre-estimate of the Costs that Waratah will suffer if the Cash Offer does not proceed, the parties agree that, for the purposes of this clause, the Costs will be the sum of A\$300,000 (**Break Fee**).

#### **1.4 Reimbursement of Costs**

Amex agrees to pay to Waratah the Break Fee within 7 days of a written demand for payment by Waratah, if at any time during the Offer Period:

- (a) any Amex Director fails to recommend the Cash Offer;
- (b) any Amex Director changes, withdraws or modifies his recommendation of the Cash Offer or makes any public statement, or takes any other action that is inconsistent with

his recommendation of the Cash Offer (including where a Competing Proposal is announced and is recommended by any Amex Director),

- (c) a Competing Proposal is announced during the Offer Period and, within 12 months of the Competing Proposal being announced, the Competing Proposal results in a person or persons (other than Waratah or its associates) obtaining voting power in more than 50% of the Amex Shares, merging or amalgamating with Amex or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the Amex Group; or
- (d) a Condition described in clauses (d), (e) or (f) of Annexure A is not satisfied due to an act or omission of Amex and Waratah does not waive that Condition in the manner provided for in Waratah's Bidder's Statement.

