

SPITFIRE MATERIALS LIMITED
ACN 125 578 743
(SPI)

and

EXCELSIOR GOLD LIMITED
ACN 123 629 863
(EXG)

MERGER IMPLEMENTATION AGREEMENT

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THIS AGREEMENT is made the 24th day of June 2018.

BETWEEN

SPITFIRE MATERIALS LIMITED (ACN 125 578 743) of 130 Stirling Highway, North Fremantle WA 6159 (**SPI**);

AND

EXCELSIOR GOLD LIMITED (ACN 123 629 863) of Unit 2, 124 Stirling Highway, North Fremantle WA 6159 (**EXG**).

RECITALS

- A.** SPI and EXG have agreed to merge by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
- B.** SPI and EXG have agreed to implement the Scheme on the terms and conditions of this agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears.

Accounting Standards means:

- (a) accounting standards as that term is defined in the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of financial reports; and
- (c) if and to the extent that any matter is not covered by the accounting standards or requirements referred to in paragraphs (a) or (b), other relevant accounting standards and generally accepted accounting principles applied from time to time in Australia for a business similar to EXG or SPI as the context requires.

Action means an action, dispute, cause of action, claim, demand, investigation, inquiry, prosecution, litigation, proceeding, suit, arbitration, mediation, or dispute resolution.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the financial market operated by it known as the Australian Securities Exchange, as appropriate.

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

Business Day means a day as defined in the Listing Rules other than any day which banks are not open for general banking business in Perth, Western Australia.

Competing Transaction: means any proposed or potential transaction or arrangement (including any takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of shares, joint venture or dual listed company structure) in relation to a party to this agreement under which a third party would, if completed:

- (a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of:
 - (i) 20% or more of the relevant party's shares or more than 50% of the shares in any of the relevant party's Subsidiaries; or
 - (ii) all or a substantial part or a material part of the business of the relevant party or any of its Subsidiaries,
- (b) directly or indirectly acquire control of the relevant party, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including, without limitation, by a reverse takeover bid or dual listed company structure) with the relevant party.

Conditions Precedent means the conditions precedent set out in Schedule 3.

Confidential Information means SPI Confidential Information or EXG Confidential Information.

Controller has the meaning it has in the Corporations Act.

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

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

Court means the Federal Court of Australia, or such other court of competent jurisdiction as agreed in writing by the parties.

Deed Poll or **Scheme Deed Poll** means a deed poll to be executed by SPI substantially in the form of Annexure A to Annexure B to this agreement (or such other form as is agreed between the parties).

Effective means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act in relation to the Scheme.

Effective Date, in relation to the Scheme, means the date on which the Scheme becomes Effective.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or

- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

End Date means the date which is six (6) months from the date of this agreement or such other date as is agreed by SPI and EXG.

Excluded Information means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the party providing the Confidential Information;
- (b) the recipient of the Confidential Information can prove by contemporaneous written documentation was already known to it at the time of disclosure by the party providing the Confidential Information (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the recipient of the Confidential Information acquires from a source other than the party providing the Confidential Information or any Related Body Corporate or Representative of the party providing the Confidential Information where such source is entitled to disclose it.

Exclusivity Period means the period from and including the date of this agreement to the earlier of:

- (a) the termination of this agreement in accordance with its terms; and
- (b) the End Date.

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

EXG Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this agreement relating to the business, technology or other affairs of the EXG Group.

EXG Director means a member on the EXG Board.

EXG Due Diligence Materials means the written information and documents made available to SPI and its Representatives by or on behalf of EXG or its Subsidiaries.

EXG Group means EXG and its Subsidiaries.

EXG Incoming Directors means each person nominated in writing by SPI to EXG prior to the Second Court Date to be appointed to the EXG Board in accordance with Schedule 5.

EXG Indemnified Parties means EXG, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

EXG Information means all information contained in the Scheme Booklet other than the SPI Information and the Independent Expert's Report.

EXG Loan Share Plans means:

- (a) the Excelsior Gold Incentive Scheme approved by EXG Shareholders in 2014; and
- (b) the Excelsior Gold Incentive Scheme approved by EXG Shareholders in 2017.

EXG Material Adverse Change means a Material Adverse Change in relation to EXG and its Subsidiaries.

EXG Material Permits means:

- (a) EXG's mining permits listed in Schedule 10; and
- (b) any and all other mining permits applied for or granted in renewal, substitution, variation or extension, in whole or in part, of those permits.

EXG Material Transaction means any of the following transactions concerning EXG or its Subsidiaries:

- (a) **(acquisition of an asset)** an acquisition, offer to acquire or agreement to acquire any asset or interest in an asset;
- (b) **(disposal of asset)** a disposal, offer to dispose or agreement to dispose of any asset or interest in an asset;
- (c) **(joint venture)** a joint venture, partnership or off-take agreement in respect of any asset or undertaking;
- (d) **(contractual or other commitment)** a new, renewed, or any variation of, any contractual or other commitment (including any undertaking to a Regulatory Authority); or
- (e) **(exercise of a contractual right)** an exercise of a contractual right or other option to renew or extend an existing agreement (including under any lease),

that:

- (i) is not in the ordinary course of its business; or
- (ii) individually or when aggregated with related transactions has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$500,000 or more,

but does not include any such transaction:

- (iii) to the extent it is fairly disclosed in writing to SPI prior to the date of this agreement;
- (iv) as expressly contemplated by this document or the transaction; or
- (v) with the prior consent of SPI.

EXG Outgoing Directors means those persons nominated in writing by SPI to EXG prior to the Second Court Date as being required to resign from the EXG Board in accordance with Schedule 5.

EXG Option means an option to acquire an EXG Share.

EXG Performance Right means a right to acquire an EXG Share.

EXG Prescribed Event means, except to the extent contemplated by this agreement or the Scheme, any of the events listed in Schedule 1 provided that an EXG Prescribed Event will not occur where EXG has first consulted with SPI in relation to the event and SPI has approved in writing the proposed event.

EXG Share means a fully paid ordinary share in the capital of EXG.

EXG Shareholder means each person registered in the Register as a holder of EXG Shares.

EXG Specified Person means each EXG Director as at the date of this agreement, being Mr David Hatch, Mr Sebastiano Randazzo, Mr Jimmy Kong Leng Lee, Mr Robert Rowan Johnston and Dr Jonathan West.

EXG Unexpired Options means EXG Options which expire on 24 November 2018 and which have not been exercised into EXG Shares before the Record Date.

First Court Date means the first day of the hearing by the Court of an application, in accordance with item 9 of Schedule 5, for an order under section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Implementation Date means the fifth Business Day immediately following the Record Date, or such other date after the Record Date agreed to in writing between the parties.

Independent Expert means any independent expert appointed by EXG, in consultation with SPI, under item 3 of Schedule 5 to prepare the Independent Expert's Report stating whether, in the expert's opinion the Scheme is in the best interest of EXG Shareholders.

Independent Expert's Report means the report prepared by the Independent Expert.

Ineligible Foreign Holder means a Scheme Participant whose address in the Register is in a jurisdiction outside Australia, except where SPI and EXG are reasonably satisfied that the issue of New SPI Shares in that jurisdiction under the Scheme would be neither prohibited by law nor unduly onerous.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or

- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within thirty (30) days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Listing Rules means the Listing Rules of ASX.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Material Adverse Change means in relation to a party, any matter, event or circumstance that occurs, is announced or becomes known to that party (whether or not it becomes public) where that matter, event or circumstance is, or could reasonably be expected to be, individually or when aggregated with all such matters, events or circumstances, materially adverse to the business, financial condition, results, material licences, operations or prospects of that party, provided that:

- (a) any change required to be done or procured by a party pursuant to this agreement and the Scheme;
- (b) any change to interest rates, gold price or currency exchange rates;
- (c) any change which is, and to the extent that it is, a consequence of Losses covered by insurance which that party's insurers have agreed to pay;
- (d) any change in the market price or trading volume of shares of that party after the date of this agreement; and
- (e) any change as regards to one party (the first party) (which change is otherwise caught by the terms of this definition) that has been fairly disclosed either to the market generally or otherwise to the other party (the second party) in writing immediately prior to the execution of this agreement and the change occurs as regards to the first party substantially in accordance with those terms,

will not be taken into account in determining whether there has been a Material Adverse Change.

Material Contract means any contract which is, or may reasonably be expected to be material to the assets, liabilities, financial position, profits, losses or operation of the entity which is party to it.

Merger means the acquisition of EXG by SPI through the implementation of the Scheme.

New SPI Shares means those SPI Shares to be issued to the Scheme Participants in consideration for their Scheme Shares pursuant to the Scheme.

Record Date means 5.00pm on the day which is three (3) Business Days after the Effective Date, or such other date as the parties agree in writing.

Register means the register of members of EXG maintained by or on behalf of EXG in accordance with section 168(1) of the Corporations Act and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any consent, waiver, decision, determination, modification, approval or other act given by a Regulatory Authority in relation to the Merger or any aspect of it which SPI and EXG, acting reasonably, determine is necessary or desirable to implement the Merger.

Regulatory Authority includes:

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

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

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

Relevant Interest has the same meaning as given by sections 608 and 609 of the Corporations Act.

Representative means, in relation to a party:

- (a) a Related Body Corporate;

- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

Rights means all accretions, rights or benefits of whatever kind attaching to or arising from EXG Shares directly or indirectly after the date of this agreement, including all dividends or other distributions and all rights to receive any dividends or other distributions, or to receive or subscribe for shares or other securities, which are declared, paid or made by EXG or a Subsidiary of EXG.

Schedule means a schedule to this agreement.

Scheme means the scheme of arrangement between EXG and Scheme Participants under which all the Scheme Shares will be transferred to SPI under Part 5.1 of the Corporations Act, substantially in the form of Annexure B, together with any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to EXG Shareholders which must:

- (a) include the Scheme, the Deed Poll, the Independent Expert's Report, an explanatory statement complying with the requirements of the Corporations Act, a notice of meeting and a proxy form; and
- (b) comply with the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules.

Scheme Consideration means the consideration to be provided by SPI to each Scheme Participant for the transfer to SPI of each Scheme Share, as determined in accordance with clause 4.2.

Scheme Meeting means the meeting of EXG Shareholders, to be convened by the Court pursuant to section 411(1) of the Corporations Act, to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Participants means each person who is registered in the Register as a holder of Scheme Shares at the Record Date.

Scheme Shares means all of the EXG Shares on issue as at the Record Date.

Second Court Date means the first day on which the Court hears the application for an order under section 411(4)(b) of the Corporations Act approving the Scheme, 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.

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

SPI Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on, or after the date of this agreement relating to the business, technology or other affairs of the SPI Group.

SPI Due Diligence Materials means the written information and documents made available to EXG and its Representatives by or on behalf of SPI or its Subsidiaries.

SPI Group means SPI and its Subsidiaries.

SPI Incoming Directors means each person nominated in writing by EXG to SPI prior to the Second Court Date to be appointed to the SPI Board in accordance with Schedule 6.

SPI Indemnified Parties means SPI, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

SPI Information means the information regarding the SPI Group provided by SPI to EXG for inclusion in the Scheme Booklet, being information:

- (a) about the SPI Group, its business, its interests, its assets and dealings in EXG Shares, its intentions for EXG and EXG's employees, and funding arrangements; and
- (b) required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations, the Listing Rules or ASIC Regulatory Guide 60.

For the avoidance of doubt, SPI Information does not include information about the EXG Group except to the extent it relates to any statement of SPI's intention relating to the EXG Group following the Effective Date, provided SPI has consented in writing to the inclusion of such statements in the Scheme Booklet.

SPI Material Adverse Change means a Material Adverse Change in relation to SPI and its Subsidiaries.

SPI Material Permits means:

- (a) SPI's mining permits listed in Schedule 11; and
- (b) any and all other mining permits applied for or granted in renewal, substitution, variation or extension, in whole or in part, of those permits.

SPI Material Transaction means any of the following transactions concerning SPI or its Subsidiaries:

- (a) **(acquisition of an asset)** an acquisition, offer to acquire or agreement to acquire any asset or interest in an asset;
- (b) **(disposal of asset)** a disposal, offer to dispose or agreement to dispose of any asset or interest in an asset;
- (c) **(joint venture)** a joint venture, partnership or off-take agreement in respect of any asset or undertaking;
- (d) **(contractual or other commitment)** a new, renewed, or any variation of, any contractual or other commitment (including any undertaking to a Regulatory Authority); or
- (e) **(exercise of a contractual right)** an exercise of a contractual right or other option to renew or extend an existing agreement (including under any lease),

that:

- (f) is not in the ordinary course of its business; or
- (g) individually or when aggregated with related transactions has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$500,000 or more,

but does not include any such transaction:

- (h) to the extent it is fairly disclosed in writing to EXG prior to the date of this agreement;
- (i) as expressly contemplated by this document or the transaction; or
- (j) with the prior consent of EXG.

SPI Nominee means:

- (a) SPI; or
- (b) a body corporate nominated by SPI after consultation with EXG pursuant to clause 4.6, all of the issued shares of which are or will on the Implementation Date be directly or indirectly owned by SPI.

SPI Option means an option to acquire a SPI Share.

SPI Outgoing Directors means those persons nominated in writing by EXG to SPI prior to the Second Court Date as being required to resign from the SPI Board in accordance with Schedule 6.

SPI Performance Right means a right to acquire a SPI Share.

SPI Prescribed Event means, except to the extent contemplated by this agreement or the Scheme, any of the events listed in Schedule 2 provided that an SPI Prescribed Event will not occur where SPI has first consulted with EXG in relation to the event and EXG has approved in writing the proposed event.

SPI Share means a fully paid ordinary share in the capital of SPI.

SPI Shareholders means holders of SPI Shares.

SPI Specified Person means each SPI Director as at the date of this agreement, being Mr John Young, Mr Neil Biddle, Mr Roger Mitchell and Mr Peter Buttigieg.

Subsidiaries has the meaning it has in the Corporations Act.

Superior Proposal means a bona fide Competing Transaction which the EXG Board or SPI Board (as applicable), acting in good faith, and after receiving written advice from its legal and financial advisers, determines:

- (a) is reasonably capable of being implemented taking into account all aspects of the Competing Transaction; and
- (b) is more favourable to EXG Shareholders or SPI Shareholders (as applicable) than the Scheme, taking into account all terms and conditions of the Competing Transaction.

Superior Proposal Period means the period commencing on the date a Superior Proposal comes into existence and ending on the date that the Superior Proposal is withdrawn, terminated, rejected, expires or is otherwise concluded.

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

Timetable means the timetable set out in Schedule 4, subject to any amendments that SPI and EXG may agree in writing.

Transaction Implementation Committee means a committee to be made up of:

- (a) representatives of each of EXG and SPI;
- (b) representatives from each of the legal advisers of EXG and SPI;
- (c) representatives from each of the corporate and financial advisers of EXG and SPI (if required); and
- (d) such other persons as the parties may agree from time to time.

1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the word "includes" in any form is not a word of limitation;

and unless the context indicates otherwise:

- (c) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to:
 - (i) a clause or schedule is a reference to a clause or schedule of this agreement;
 - (ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (iii) a document in writing includes a document produced by means of typewriting, printing, lithography, photography and other modes of representing or reproducing words in a visible form, recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
 - (iv) a document (including this agreement) includes a reference to all schedules, exhibits, attachments and annexures to it, and is

to that document as varied, novated, ratified or replaced from time to time;

- (v) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
- (vi) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) a reference to a day is to a period of time commencing at midnight and ending twenty-four (24) hours later;
- (g) a reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act;
- (h) a reference to "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programmes, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (i) the words "**entity**" and "**officer**" have the same meaning as in section 9 of the Corporations Act, and "control" has the same meaning as in section 50AA of the Corporations Act;
- (j) time is a reference to time in Perth, Western Australia;
- (k) a reference to "**\$**" or "**dollar**" is to Australian currency;
- (l) a contravention of or a breach of any of the representations and warranties includes any of the representations and warranties not being complete, true and correct;
- (m) each representation and warranty is a separate representation and warranty, and its meaning is not affected by any other representation or warranty;
- (n) a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (o) when a day on or by which anything to be done is not a Business Day, that thing may be done on or by the next Business Day; and
- (p) If an act under this agreement required to be done by a party on or by a given day is done after 5:00pm on that day, it is taken to be done on the next day.

2. AGREEMENT TO PROPOSE SCHEME AND IMPLEMENT MERGER

2.1 EXG to propose Scheme

EXG agrees to propose the Scheme to Scheme Participants on and subject to the terms and conditions of this agreement.

2.2 SPI to assist with Scheme

SPI agrees to assist EXG to propose the Scheme to Scheme Participants on and subject to the terms and conditions of this agreement.

2.3 Agreement to implement Merger

The parties agree to implement the Merger on the terms and conditions of this agreement.

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective and the obligations of SPI under clause 4.2 are not binding unless each of the Conditions Precedent contained in Schedule 3 are satisfied or waived to the extent and in the manner set out in clauses 3.2 and 3.3.

3.2 Benefit of certain Conditions Precedent

A Condition Precedent may only be waived in writing by a party entitled to the benefit of that Condition Precedent as noted in the table set out in Schedule 3 and will be effective only to the extent specifically set out in that waiver.

A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.2 may do so in its absolute discretion.

If a Condition Precedent has been included for the benefit of both parties, the breach or non-fulfilment of the Condition Precedent may be waived only by the consent of both parties.

3.3 Waiver of Conditions Precedent

If either EXG or SPI waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

- (a) subject to clause 3.3(b), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (b) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.3(a); or
 - (ii) does not accept the condition, the Condition Precedent has not been waived.

3.4 Reasonable endeavours

Each of EXG and SPI agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which they are responsible, as noted in the table set out in Schedule 3:

- (i) is satisfied as soon as practicable after the date of this agreement; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied as noted in the table set out in Schedule 3 (as the case may require); and
- (b) there is no occurrence that would prevent the Conditions Precedent for which they are responsible, as noted in the table set out in Schedule 3, being satisfied.

3.5 Regulatory matters

Without limiting clause 3.4, each party:

- (a) **(Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process for the Scheme, including responding to requests for information at the earliest practicable time;
- (b) **(representation)** subject to the requirements of the relevant Regulatory Authority, has the right to be invited to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (c) **(consultation)** must use its reasonable endeavours to consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval ("**Communications**") and, without limitation:
 - (i) provide the other party with drafts of any material written Communications to be sent to a Regulatory Authority and make such amendments as the other party reasonably requires; and
 - (ii) provide copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.6(b), give written notice to the other party as soon as possible (and in any event before 8.00am on the Business Day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any

Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.7 Effect of waiver or non-fulfilment

A waiver of such breach or non-fulfilment in respect of one Condition Precedent does not constitute:

- (a) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
- (b) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.8 Consultation on failure of Condition Precedents

If:

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

then the parties must consult in good faith with a view to determining whether:

- (d) the Merger may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.9 Failure to agree

If the parties are unable to reach agreement under clause 3.8 within ten (10) Business Days (or any shorter period ending at 8:00am on the Business Day before the Second Court Date):

- (a) subject to clause 3.9(b), either party may terminate this agreement (and such termination will be in accordance with clause 13.1(g)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and such termination will be in accordance with clause 13.1(g)(ii)),

in each case before 8.00am on the Second Court Date.

A party will not be entitled to terminate this agreement pursuant to this clause 3.9 if the relevant Condition Precedent has not been satisfied or agreement

cannot be reached as a result of a breach of this agreement by that party or a deliberate act or omission of that party.

3.10 Regulatory Approval

A Regulatory Approval will be regarded as having been obtained notwithstanding that a condition or conditions may have been attached to that Regulatory Approval if that condition is reasonably satisfactory to EXG and SPI.

3.11 Certificate

Each party must provide:

- (a) the other (in draft) by 5.00pm on the day immediately prior to the Second Court Date; and
- (b) the Court at the hearing on the Second Court Date,

with a certificate confirming that all of the Conditions Precedent (other than the Conditions Precedent in items 3 and 4 of Schedule 3) have been satisfied or waived in accordance with the terms of this agreement.

4. OUTLINE OF SCHEME

4.1 Scheme

Subject to the terms and conditions of this agreement, EXG agrees to propose the Scheme to Scheme Participants under which:

- (a) all of the Scheme Shares held by Scheme Participants will be transferred to SPI; and
- (b) Scheme Participants will be entitled to receive the Scheme Consideration for each Scheme Share held on the Record Date.

4.2 Scheme Consideration

- (a) Subject to clause 4.2(d), the parties will procure that each Scheme Participant receives 1 New SPI Share for every 2.208 Scheme Shares held as at 5.00pm on the Record Date in accordance with this agreement.
- (b) Subject to clauses 4.2(c), 4.4 and 4.5, SPI undertakes and warrants to EXG that in consideration for the transfer to SPI of each Scheme Share held by a Scheme Participant under the terms of the Scheme on the Implementation Date, SPI will provide to each Scheme Participant the Scheme Consideration in accordance with the terms of this agreement and the Scheme.
- (c) SPI will procure that the New SPI Shares to be issued as Scheme Consideration will be validly issued, fully paid, unencumbered, rank equally with SPI's other fully paid ordinary shares from their date of issue and that application will be made to ASX for quotation of the New SPI Shares.
- (d) Any fractional entitlement of a Scheme Participant to New SPI Shares will be rounded up to the nearest whole number of New SPI Shares.

4.3 No amendments to Scheme without consent

EXG must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Scheme without the prior consent of SPI (such consent not to be unreasonably withheld).

4.4 Ineligible Foreign Holders

Where a Scheme Participant is an Ineligible Foreign Holder, the number of New SPI Shares to which the Scheme Participant would otherwise be entitled, will be issued to a nominee approved by SPI, EXG and ASIC (if necessary), who will sell those New SPI Shares as soon as practicable (and in any event not more than fifteen (15) Business Days after the Implementation Date), at the risk of that Ineligible Foreign Holder, and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, and selling costs, to that Ineligible Foreign Holder in full satisfaction of that Ineligible Foreign Holder's rights under this agreement to Scheme Consideration.

4.5 Small Shareholders

Scheme Participants who are entitled to receive 5,000 or less New SPI Shares (or such other number as may be agreed between SPI and EXG in writing) under the Scheme will be given the option to have those New SPI Shares issued to a nominee approved by SPI, EXG and ASIC (if necessary), who will sell those New SPI Shares as soon as practicable (and in any event not more than fifteen (15) Business Days after the Implementation Date) (at the risk of the Scheme Participant) and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to that Scheme Participant in full satisfaction of that Scheme Participant's rights under this agreement to Scheme Consideration.

4.6 Appointment of the SPI Nominee

On or before the date which is five (5) Business Days before the Second Court Date, SPI must by written notice to EXG nominate the SPI Nominee. If the SPI Nominee is not SPI, all references in this agreement to SPI acquiring the Scheme Shares and paying the Scheme Consideration are to be construed as if references to SPI were replaced with references to the nominated SPI Nominee, except that SPI shall remain responsible for the performance of those obligations with the SPI Nominee.

4.7 Transfer or cancellation of outstanding EXG Options

- (a) The parties must use reasonable endeavours (acting co-operatively and in good faith) to procure that, as soon as practicable after the date of this agreement, each holder of EXG Unexpired Options enters into a deed in a form reasonably acceptable to SPI, under which:
 - (i) the holder agrees to the transfer or cancellation of all of their EXG Unexpired Options in exchange for SPI Options being granted:
 - (A) at the ratio of 1 SPI Option for every 2.208 EXG Unexpired Options transferred or cancelled; and
 - (B) on terms set out in Schedule 9;

- (ii) the transfer or cancellation of the EXG Unexpired Options is subject to the Scheme becoming Effective and is to take effect on the Implementation Date; and
 - (iii) SPI agrees to issue the SPI Options to the holder on the Implementation Date.
- (b) Within twenty (20) Business Days of the date of this agreement, EXG must apply to the ASX for a waiver from Listing Rule 6.23.2 to allow the EXG Options to be cancelled for consideration.

4.8 EXG Performance Rights

The parties must use reasonable endeavours (acting co-operatively and in good faith) to procure that, as soon as practicable after the date of this agreement, each holder of EXG Performance Rights enters into a deed in a form reasonably acceptable to SPI, under which:

- (a) the holder:
 - (i) elects to exercise of all vested EXG Performance Shares, with such conversion occurring prior to the Record Date; and
 - (ii) agrees to the cancellation of all unvested EXG Performance Rights for no consideration; and
- (b) the cancellation of all unvested EXG Performance Rights is subject to the Scheme becoming Effective and is to take effect on the Implementation Date.

4.9 EXG Loan Share Plans

The parties must use reasonable endeavours (acting co-operatively and in good faith) to procure that, as soon as practicable after the date of this agreement, each holder of EXG Shares issued under the EXG Loan Share Plans enters into a deed in a form reasonably acceptable to SPI and EXG, under which:

- (a) on implementation of the Scheme:
 - (i) the outstanding loan amount owing to EXG by the holder under the applicable EXG Loan Share Plan will be forgiven or deemed to be repaid, and replaced by a loan for the same amount owing to SPI; and
 - (ii) the relevant EXG Shares will be dealt with under the Scheme in the same way as the other Scheme Shares;
- (b) a holding lock will be placed on the new SPI Shares issued to the holder under the Scheme until the applicable loan has been repaid to SPI;
- (c) subject to paragraph (d), the loan will be on the same terms as the loan from EXG under the applicable EXG Loan Share Plan, including:
 - (i) limited in recourse to the applicable SPI Shares; and
 - (ii) repayable 5 years from issue of the relevant EXG Shares under the applicable Loan Share Plan; and

- (d) the early repayment trigger on ceasing to be an Eligible Participant under the applicable EXG Loan Share Plan will not apply in all cases.

5. CO-OPERATION AND TIMING

5.1 General obligations

EXG and SPI must each:

- (a) use reasonable endeavours and commit necessary resources (including management and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

5.2 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practicable after the date of this agreement. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:
- (i) implement the Merger; and
- (ii) subject to clause 5.2(b), ensure the smooth transition of the management of the business and affairs of the EXG Group to SPI following the implementation of the Scheme.
- (b) Subject to this agreement, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this agreement constitutes the relationship of a partnership or a joint venture between the parties.

5.3 SPI Access

- (a) Between the date of this agreement and the earlier of the Implementation Date and the date this agreement is terminated, EXG must:
- (i) as soon as reasonably practicable, provide SPI and its Representatives with any documents, records and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (ii) provide SPI and its officers, employees and advisers with reasonable access to EXG's officers, employees and advisers which SPI reasonably requires, including for the purposes of:
- (A) understanding EXG's business, assets, financial position (including its cashflow and working capital position), trading position and management control systems;

- (B) implementing the Scheme;
- (C) preparing for carrying on the business of EXG following implementation of the Merger; and
- (D) any other purpose which is agreed in writing between the parties,

provided in every case that such access does not place an unreasonable burden on the ability of EXG to run its business.

5.4 EXG Access

- (a) Between the date of this agreement and the earlier of the Implementation Date and the date this agreement is terminated, SPI must:
 - (i) as soon as reasonably practicable, provide EXG and its Representatives with any documents, records and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
 - (ii) provide EXG and its officers, employees and advisers with reasonable access to SPI's officers, employees and advisers which EXG which reasonably requires, including for the purposes of:
 - (A) understanding SPI's business, assets, financial position (including its cashflow and working capital position), trading position and management control systems;
 - (B) implementing the Scheme; and
 - (C) any other purpose which is agreed in writing between the parties,

provided in every case that such access does not place an unreasonable burden on the ability of SPI to run its business.

5.5 SPI's right to separate representation

SPI is entitled to separate representation at all Court proceedings relating to the Scheme. Nothing in this agreement is to be taken to give EXG any right or power to make or give undertakings to the Court for or on behalf of SPI or any nominated SPI Nominee.

6. IMPLEMENTATION OBLIGATIONS OF THE PARTIES

6.1 EXG's obligations

EXG must comply with the obligations of EXG set out in Schedule 5 and take all reasonable steps that are necessary or reasonably requested by SPI to implement the Scheme as soon as is reasonably practicable having regard to the Timetable and in the most efficient manner for the Scheme Participants and in any event prior to the End Date.

6.2 SPI's obligations

SPI must comply with the obligations of SPI set out in Schedule 6 and take all reasonable steps that are necessary or reasonably requested by EXG to assist EXG to implement the Scheme as soon as is reasonably practicable having regard to the Timetable and in the most efficient manner for the Scheme Participants and in any event prior to the End Date.

6.3 Recommendation

Each EXG Director, in the public announcement to be issued in accordance with clause 14.1, the Scheme Booklet and any other material public statement made after the signing of this agreement and relating to the Scheme or the Merger, must make a statement that, in the absence of a Superior Proposal and subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of EXG Shareholders:

- (a) each member of the EXG Board recommends that EXG Shareholders vote in favour of the resolution to approve the Scheme; and
- (b) confirms that each member of the EXG Board will vote the EXG Shares in which they have a Relevant Interest in favour of the resolution to approve the Scheme.

6.4 Loan Funding

EXG acknowledges and agrees that SPI intends to, during the period commencing on the date of this agreement and ending on the Implementation Date, incur financial indebtedness of up to \$2,000,000 by way of loan arrangements with directors of SPI (or their nominees) and/or other third party lenders.

7. SCHEME BOOKLET

7.1 Preparation

Without limiting clauses 6.1 or 6.2:

- (a) **(preparation)** EXG is generally responsible for the preparation of the Scheme Booklet (other than the SPI Information and the Independent Expert's Report) but will:
 - (i) provide drafts of the Scheme Booklet to SPI in accordance with clause 7.2(a); and
 - (ii) obtain the prior written approval of SPI in accordance with clause 7.2(e) before:
 - (A) providing the Regulator's Draft to ASIC for approval pursuant to section 411(2) of the Corporations Act; and
 - (B) requesting that ASIC register the explanatory statement included in the Scheme Booklet in accordance with item 10 of Schedule 5;
- (b) **(compliance – EXG)** EXG must take all necessary steps to ensure that the EXG Information:

- (i) complies with the requirements of:
 - (A) the Corporations Act;
 - (B) the Corporations Regulations;
 - (C) ASIC Regulatory Guide 60; and
 - (D) the Listing Rules; and
 - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission); and
- (c) **(compliance – SPI)** SPI must take all necessary steps to ensure that the SPI Information:
- (i) complies with the requirements of:
 - (A) the Corporations Act;
 - (B) the Corporations Regulations;
 - (C) ASIC Regulatory Guide 60; and
 - (D) the Listing Rules; and
 - (ii) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).

7.2 Content of Scheme Booklet

Without limiting clause 6.1, EXG must:

- (a) **(consult SPI):**
- (i) as soon as reasonably practicable after the date of this agreement, provide to SPI an initial draft of the Scheme Booklet for the purpose of enabling SPI to review and comment on that draft document;
 - (ii) provide to SPI amended drafts of the Scheme Booklet as reasonably agreed for the purpose of enabling SPI to review and comment on those draft documents;
 - (iii) take comments made by SPI into account in good faith when producing a revised draft of the Scheme Booklet; and
 - (iv) provide to SPI a revised penultimate draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable SPI to review the Regulator's Draft at least three (3) Business Days before its submission;
- (b) **(amend Scheme Booklet)** implement such changes to those parts of the Scheme Booklet relating to the SPI Group as reasonably requested by SPI in accordance with clause 7.2(a) prior to finalising the Regulator's Draft;

- (c) **(approval of Regulators Draft)** as soon as reasonably practicable after finalisation of an advanced draft of the Regulator's Draft suitable for review by ASIC, procure that the EXG Directors consider (and if thought fit) approve the Regulator's Draft as being in a form appropriate for provision to ASIC for review;
- (d) **(Regulatory Review Period)** during the Regulatory Review Period:
 - (i) promptly provide to SPI, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 or the Listing Rules to be included in the Scheme Booklet; and
 - (ii) keep SPI informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in co-operation with SPI, to resolve any such matters; and
- (e) **(SPI Information)** obtain approval from SPI, for the form and context in which the SPI Information appears in the Scheme Booklet before:
 - (i) providing the Regulator's Draft to ASIC for approval pursuant to section 411(2) of the Corporations Act; and
 - (ii) requesting that ASIC register the explanatory statement included in the Scheme Booklet in accordance with item 10 of Schedule 5.

7.3 SPI Information

Without limiting clause 6.2, SPI:

- (a) consents to the inclusion of the SPI Information in the Scheme Booklet; and
- (b) acknowledges that:
 - (i) it is responsible for ensuring that the SPI Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that EXG will not verify or edit that information in the Scheme Booklet; and
 - (ii) the Scheme Booklet will state that SPI is responsible for the SPI Information, in accordance with clause 7.4.

7.4 Scheme Booklet responsibility statements

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) EXG has prepared, and is responsible for, the EXG Information in the Scheme Booklet, and that SPI and its directors and officers do not assume any responsibility for the accuracy or completeness of that EXG Information;
- (b) SPI has prepared, and is responsible for, the SPI Information in the Scheme Booklet, and that EXG and its directors and officers do not assume any responsibility for the accuracy or completeness of that SPI

Information except to the extent that EXG has provided SPI with information for the purpose of SPI preparing information on the merged entity following implementation of the Scheme; and

- (c) the Independent Expert has prepared and is responsible for the Independent Expert's Report and:
 - (i) EXG and its directors and officers do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report; and
 - (ii) SPI and its directors and officers do not assume any responsibility for the accuracy or completeness of the Independent Expert's Report.

7.5 Disagreement on content

If SPI and EXG disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of SPI Information contained in the Scheme Booklet, EXG will make such amendments as SPI reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the EXG Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

7.6 Verification

Each party must undertake appropriate verification processes for the information prepared by that party for the Scheme Booklet.

8. CONDUCT OF BUSINESS

8.1 Conduct of EXG's business

From the date of this agreement up to and including the Implementation Date, EXG must conduct its business in the ordinary course, in substantially the same manner and at the same locations as previously conducted and, to the extent consistent, use reasonable efforts to:

- (a) preserve intact its current business organisation;
- (b) keep available the services of its current officers and employees;
- (c) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with it;
- (d) maintain its business and its assets and keep its assets in good working order, including maintaining at least its current level of insurance;
- (e) identify any change of control or similar provisions in any significant contracts (including all Material Contracts) or any joint venture documentation and obtain the consents of relevant persons who have rights in respect of those persons to the transactions contemplated by the Merger; and

- (f) ensure there is no material decrease in the amount of cash in EXG other than as:
 - (i) used in the ordinary course of business and consistent with forecast cash utilisation; or
 - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Merger.

8.2 Conduct of SPI's business

From the date of this agreement up to and including the Implementation Date, SPI must conduct its business in the ordinary course, in substantially the same manner and at the same locations as previously conducted and, to the extent consistent, use reasonable efforts to:

- (a) preserve intact its current business organisation;
- (b) keep available the services of its current officers and employees;
- (c) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with it;
- (d) maintain its business and its assets and keep its assets in good working order, including maintaining at least its current level of insurance;
- (e) identify any change of control or similar provisions in any significant contracts (including all Material Contracts) or any joint venture documentation and obtain the consents of relevant persons who have rights in respect of those persons to the transactions contemplated by the Merger; and
- (f) ensure there is no material decrease in the amount of cash in SPI other than as:
 - (i) used in the ordinary course of business and consistent with forecast cash utilisation; or
 - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Merger.

8.3 Appointment and retirement of EXG Directors

On or promptly following the Effective Date, EXG must use its reasonable endeavours to:

- (a) cause the appointment of each EXG Incoming Director to the EXG Board;
- (b) procure that each of the EXG Outgoing Directors retire from the EXG Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against EXG; and
- (c) reconstitute the boards of each other member of the EXG Group in accordance with such directions (if any) given by SPI to EXG.

8.4 Appointment and retirement of SPI Directors

On or promptly following the Effective Date, SPI must use its reasonable endeavours to:

- (a) cause the appointment of each SPI Incoming Director to the SPI Board;
- (b) procure that each of the SPI Outgoing Directors retire from the SPI Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against SPI; and
- (c) reconstitute the boards of each other member of the SPI Group in accordance with such directions (if any) given by EXG to SPI.

8.5 EXG Prohibited actions

Other than with the prior written approval of SPI or as required by this agreement, EXG must not, and must procure that its Subsidiaries do not, during the period referred to in clause 8.1:

- (a) **(EXG Prescribed Event)** take any action which would be reasonably expected to give rise to an EXG Prescribed Event;
- (b) **(EXG Prescribed Event agreement)** agree to do anything which would be reasonably expected to give rise to an EXG Prescribed Event;
- (c) **(Material Contracts)** enter into or terminate a Material Contract other than a Material Contract:
 - (i) which has been disclosed to SPI; and
 - (ii) SPI has agreed in writing to the entry into or termination of that specific disclosed Material Contract;
- (d) **(transaction based payments)** enter into any contract or commitment (including any employment contract), or renew or amend any existing contract or commitment, to provide for a payment to be made to the counterparty directly or indirectly as a result of:
 - (i) EXG or SPI entering into this agreement;
 - (ii) SPI, the SPI Nominee or both acquiring a Relevant Interest in EXG Shares; or
 - (iii) the Scheme or a transaction evidenced by this agreement or the Scheme;
- (e) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;
- (f) **(dividends)** announce, declare or pay any dividends; or
- (g) **(agreement)** agree to do any of the matters set out above.

8.6 SPI Prohibited actions

Other than with the prior written approval of EXG or as required or contemplated by this agreement, SPI must not, and must procure that its Subsidiaries do not, during the period referred to in clause 8.2:

- (a) **(SPI Prescribed Event)** take any action which would be reasonably expected to give rise to a SPI Prescribed Event;
- (b) **(SPI Prescribed Event agreement)** agree to do anything which would be reasonably expected to give rise to a SPI Prescribed Event;
- (c) **(Material Contracts)** enter into or terminate a Material Contract other than a Material Contract:
 - (i) which has been disclosed to EXG; and
 - (ii) EXG has agreed in writing to the entry into or termination of that specific disclosed Material Contract;
- (d) **(transaction based payments)** enter into any contract or commitment (including any employment contract), or renew or amend any existing contract or commitment, to provide for a payment to be made to the counterparty directly or indirectly as a result of:
 - (i) SPI or EXG entering into this agreement;
 - (ii) EXG acquiring a Relevant Interest in SPI Shares; or
 - (iii) the Scheme or a transaction evidenced by this agreement or the Scheme;
- (e) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;
- (f) **(dividends)** announce, declare or pay any dividends; or
- (g) **(agreement)** agree to do any of the matters set out above.

9. EXCLUSIVITY

9.1 No existing discussions - EXG

- (a) Subject to clause 9.1(b), EXG represents and warrants that it is not, as at the date of this agreement, in negotiations or discussions in respect of any Competing Transaction with any other person.
- (b) To the extent that EXG is in negotiations or discussions in respect of any Competing Transaction as at the date of this agreement, EXG undertakes to terminate those negotiations and discussions within two (2) Business Days following its entry into this agreement.

9.2 No existing discussions - SPI

- (a) Subject to clause 9.2(b), SPI represents and warrants that it is not, as at the date of this agreement, in negotiations or discussions in respect of any Competing Transaction with any other person.

- (b) To the extent that SPI is in negotiations or discussions in respect of any Competing Transaction as at the date of this agreement, SPI undertakes to terminate those negotiations and discussions within two (2) Business Days following its entry into this agreement.

9.3 No-shop

During the Exclusivity Period, each of EXG and SPI must ensure that neither it nor any of its Related Bodies Corporate or Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may be reasonably expected to lead to a Competing Transaction.

Nothing in this clause 9.3 prevents EXG or SPI from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Merger or its business generally.

9.4 No-talk

Subject to clause 9.7, during the Exclusivity Period, each of EXG and SPI must ensure that neither it nor any of its Related Bodies Corporate or Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by EXG or SPI (as applicable) or any of their Related Bodies Corporate or Representatives or the person has publicly announced the Competing Transaction.

9.5 Due diligence information

During the Exclusivity Period, each of EXG and SPI must ensure that neither it nor any of its Related Bodies Corporate or Representatives:

- (a) solicits, invites, initiates, encourages or, subject to clause 9.7, facilitates any other party other than SPI or EXG (as applicable) to undertake due diligence investigations on any member of the EXG Group or SPI Group (as applicable) or their businesses or operations; or
- (b) subject to clause 9.7:
 - (i) makes available to any other person or permits any other person to receive (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the EXG Group or SPI Group (as applicable) or their businesses or operations; or

- (ii) permits access to the employees, officers or sites of the EXG Group or SPI Group (as applicable) to any other person (or that person's Representatives) who might reasonably be expected to submit a proposal for a Competing Transaction.

9.6 Notice of unsolicited approach

During the Exclusivity Period, each party must promptly inform the other party if it, or any of its Related Bodies Corporate or Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and subject to clause 9.7 must disclose all material details of the Competing Transaction to the other party, including details of the proposed bidder or acquirer;
- (b) receives any request for information relating to EXG, SPI or any of their Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of EXG, SPI or any of their Related Bodies Corporate, which EXG or SPI has reasonable grounds to suspect may relate to a current or future Competing Transaction; and
- (c) provides any information relating to EXG, SPI or any of their Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction.

9.7 Exceptions

Clauses 9.4 and, where relevant, 9.5 and 9.6(a) do not apply to the extent that they restrict EXG or SPI or the EXG Board or SPI Board from taking or refusing to take any action with respect to a bona fide Competing Transaction (which was not solicited, invited, encouraged or initiated by either party in contravention of clause 9.3) provided that the EXG Board or SPI Board (as applicable) has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, such a bona fide Competing Transaction could reasonably be considered to become a Superior Proposal; and
- (b) after receiving written advice from external legal advisers, that failing to respond to such a bona fide Competing Transaction would be reasonably likely to constitute a breach of the EXG Board's or SPI Board's fiduciary or statutory obligations.

9.8 EXG Matching Right

- (a) During the Exclusivity Period, EXG must not enter into any legally binding agreement to undertake a Competing Transaction and must use its reasonable endeavours to procure that none of its directors publicly recommend a Competing Transaction unless:
 - (i) the EXG Board acting in good faith determines that the Competing Transaction would or is likely to be a Superior Proposal;
 - (ii) EXG has provided SPI with the material terms and conditions of the Competing Transaction (including price and the identity of the person that has proposed the Competing Transaction); and

- (iii) SPI has not, within five (5) Business Days of the notification under clause 9.8(a)(ii), submitted a written proposal to EXG (including a proposed variation to the terms of the Scheme or any other transaction) (**Revised Proposal**) which is on terms no less favourable than the Competing Transaction (taking in account, without limitation, the price, form and certainty of consideration to be provided under the Revised Proposal).
- (b) The EXG Board must consider the Revised Proposal and if it determines, acting in good faith, that the Revised Proposal is on terms no less favourable than the Competing Transaction (taking in account, without limitation, the price, form and certainty of consideration to be provided under the Revised Proposal), EXG and SPI must, in the absence of receipt of a more favourable proposal for another Competing Transaction, use reasonable endeavours to agree any amendments to this agreement and the contents of the Scheme Booklet (if applicable), which are reasonably necessary to reflect the SPI Revised Proposal.
- (c) Any amendment or modification of a Competing Transaction proposed by a third party that results in the EXG Board determining that the amended or modified Competing Transaction is, or may reasonably be expected to lead to, a Superior Proposal will be deemed to be a new Competing Transaction so that the provisions of this clause 9 will require notification by EXG to SPI of the terms of the amended Competing Transaction and the right of SPI to match such amended Competing Transaction but on the basis that SPI will have five (5) Business Days to submit a revised proposal.

9.9 SPI Matching Right

- (a) During the Exclusivity Period, SPI must not enter into any legally binding agreement to undertake a Competing Transaction and must use its reasonable endeavours to procure that none of its directors publicly recommend a Competing Transaction unless:
 - (i) the SPI Board acting in good faith determines that the Competing Transaction would or is likely to be a Superior Proposal;
 - (ii) SPI has provided EXG with the material terms and conditions of the Competing Transaction (including price and the identity of the person that has proposed the Competing Transaction); and
 - (iii) EXG has not, within five (5) Business Days of the notification under clause 9.9(a)(ii), submitted a written proposal to SPI (including a proposed variation to the terms of the Scheme or any other transaction) (**SPI Revised Proposal**) which is on terms no less favourable than the Competing Transaction (taking in account, without limitation, the price, form and certainty of consideration to be provided under the SPI Revised Proposal).
- (b) The SPI Board must consider the SPI Revised Proposal and if it determines, acting in good faith, that the SPI Revised Proposal is on terms no less favourable than the Competing Transaction (taking in account, without limitation, the price, form and certainty of consideration to be provided under the SPI Revised Proposal), SPI and EXG must, in the absence of receipt of a more favourable proposal for another Competing Transaction, use reasonable endeavours to agree any amendments to

this agreement and the contents of the Scheme Booklet (if applicable), which are reasonably necessary to reflect the Revised Proposal.

- (c) Any amendment or modification of a Competing Transaction proposed by a third party that results in the SPI Board determining that the amended or modified Competing Transaction is, or may reasonably be expected to lead to, a Superior Proposal will be deemed to be a new Competing Transaction so that the provisions of this clause 9 will require notification by SPI to EXG of the terms of the amended Competing Transaction and the right of EXG to match such amended Competing Transaction but on the basis that EXG will have five (5) Business Days to submit a revised proposal.

9.10 Legal advice

EXG and SPI acknowledge that they have received legal advice on this agreement and the operation of this clause 9.

10. REIMBURSEMENT OF SPI COSTS

10.1 Background

This clause 10 has been agreed in circumstances where:

- (a) SPI and EXG believe that the Merger will provide significant benefits to SPI, EXG and their respective shareholders, and SPI and EXG acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, both SPI and EXG will incur significant costs;
- (b) SPI and EXG requested that provision be made for the payments outlined in clauses 10.2 and 10.3 (respectively), without which, SPI and EXG would not have entered into this agreement;
- (c) the SPI Board and EXG Board believe that it is appropriate for both parties to agree to the payments referred to in this clause 10 to secure their participation in the Merger; and
- (d) SPI and EXG have received legal advice on this agreement and the operation of this clause 10.

10.2 Payment by EXG to SPI

EXG agrees to pay to SPI \$300,000 if:

- (a) **(Competing Transaction)** on or before the End Date, a Competing Transaction in relation to EXG is announced or is open for acceptance and is reasonably capable of being completed and is more favourable to Scheme Participants;
- (b) **(withdrawal or modification of recommendation)** any EXG Director:
 - (i) fails to recommend the Scheme as contemplated by clauses 6.3(a) and 6.3(b);
 - (ii) withdraws or adversely modifies that recommendation;

- (iii) makes any public statement to the effect, or takes (or fails to take) any other action that suggests that they no longer make that recommendation; or

except:

- (iv) if a EXG Director changes their recommendation following the receipt of the Independent Expert's Report where that report states that in the opinion of the Independent Expert the Scheme is not in the best interests of EXG Shareholders (other than where a Competing Transaction has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this agreement);
 - (v) where EXG is entitled to terminate this agreement pursuant to clause 13.1(i) and has given the appropriate termination notice to SPI; or
 - (vi) where EXG is entitled to terminate this agreement as a result of an SPI Prescribed Event or a Material Adverse Change in relation to SPI and has given the appropriate termination notice to SPI.
- (c) **(material breach)** if SPI validly terminates this agreement under clause 13.1(h);
 - (d) **(breach of exclusivity)** EXG is in breach of clause 9 and does not cease the conduct which caused the breach within five (5) Business Days following written notice from SPI outlining the nature of the breach;
 - (e) **(Superior Proposal)** the Merger does not proceed because EXG enters into a legally binding agreement to undertake a Superior Proposal (notwithstanding any other provision of this clause 10.2);
 - (f) **(Disposal of Securities)** a member of the EXG Board disposes, or causes the disposal, of any EXG Share which he holds or controls, other than in circumstances disclosed in writing to SPI on or before the date of entry into this agreement; or
 - (g) **(EXG Prescribed Event or EXG Material Adverse Change)** all of the following are satisfied:
 - (i) a EXG Prescribed Event or a EXG Material Adverse Change occurs prior to 8:00am on the Second Court Date; and
 - (ii) this agreement is terminated in accordance with clause 13; and
 - (iii) all of the following apply in relation to the EXG Prescribed Event or the EXG Material Adverse Change:
 - (A) the prevention of the EXG Prescribed Event or EXG Material Adverse Change was within the control of EXG; and
 - (B) had the EXG Prescribed Event or EXG Material Adverse Change occurred prior to the date of this agreement, the EXG Prescribed Event or EXG Material Adverse

Change might reasonably be expected to have resulted in SPI not entering into this agreement; and

- (C) EXG has failed to rectify the EXG Prescribed Event or EXG Material Adverse Change within ten (10) Business Days after receipt of notice from SPI requiring EXG to do so.

10.3 Payment by SPI to EXG

SPI agrees to pay to EXG \$300,000 if:

- (a) **(Competing Transaction)** on or before the End Date, a Competing Transaction in relation to SPI is announced or is open for acceptance and is reasonably capable of being completed and is more favourable to SPI Shareholders;
- (b) **(material breach)** if EXG validly terminates this agreement under clause 13.1(i);
- (c) **(breach of exclusivity)** SPI is in breach of clause 9 and does not cease the conduct which caused the breach within five (5) Business Days following written notice from EXG outlining the nature of the breach;
- (d) **(Superior Proposal)** the Merger does not proceed because SPI enters into a legally binding agreement to undertake a Superior Proposal (notwithstanding any other provision of this clause 10.3);
- (e) **(Disposal of Securities)** a member of the SPI Board disposes, or causes the disposal, of any SPI Share which he holds or controls, other than in circumstances disclosed in writing to EXG on or before the date of entry into this agreement; or
- (f) **(SPI Prescribed Event or SPI Material Adverse Change)** all of the following are satisfied:
 - (i) a SPI Prescribed Event or a SPI Material Adverse Change occurs prior to 8:00am on the Second Court Date; and
 - (ii) this agreement is terminated in accordance with clause 13; and
 - (iii) all of the following apply in relation to the SPI Prescribed Event or the SPI Material Adverse Change:
 - (A) the prevention of the SPI Prescribed Event or SPI Material Adverse Change was within the control of SPI; and
 - (B) had the SPI Prescribed Event or SPI Material Adverse Change occurred prior to the date of this agreement, the SPI Prescribed Event or SPI Material Adverse Change might reasonably be expected to have resulted in EXG not entering into this agreement; and
 - (C) SPI has failed to rectify the SPI Prescribed Event or SPI Material Adverse Change within ten (10) Business Days after receipt of notice from EXG requiring SPI to do so.

10.4 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event under clauses 10.2 and 10.3 no amount is payable under clauses 10.2 or 10.3 if the Scheme becomes Effective.

10.5 Timing of payment

EXG must pay SPI the amount referred to in clause 10.2 within ten (10) Business Days of receipt by EXG of a demand for payment from SPI. The demand may only be made:

- (a) after the occurrence of an event referred to in clauses 10.2(a), 10.2(b)(i), 10.2(b)(ii), 10.2(b)(iii), 10.2(c), 10.2(d), 10.2(e) or 10.2(f); or
- (b) if all of the circumstances referred to in clause 10.2(g) occur.

SPI must pay EXG the amount referred to in clause 10.3 within ten (10) Business Days of receipt by SPI of a demand for payment from EXG. The demand may only be made:

- (a) after the occurrence of an event referred to in clauses 10.3(a), 10.3(b), 10.3(c), 10.3(d) or 10.3(e); or
- (b) if all of the circumstances referred to in clause 10.3(f) occur.

10.6 Nature of payment

The amount payable by EXG or SPI under clause 10.2 and SPI to EXG under clause 10.3 is an amount to compensate the other party for:

- (a) advisory costs (including costs of advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by either party in pursuing the Merger or in not pursuing other alternative acquisitions or strategic initiatives which either party could have developed to further its business and objectives,

but (subject to clauses 13.4(b) and 13.4(c)) is without prejudice to and does not limit any rights:

- (e) which SPI, any SPI Indemnified Party or any SPI Shareholder may have against EXG; and
- (f) which EXG, any EXG Indemnified Party or any Scheme Participant may have against SPI.

10.7 Survival

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

11. REPRESENTATIONS AND WARRANTIES

11.1 EXG's representations and warranties

EXG represents and warrants to SPI (on its own behalf and separately as trustee or nominee for each member of the SPI Board) that each of the statements set out in Schedule 7 is true and correct in all material respects as at the date of this agreement and as at 8:00am on the Second Court Date.

11.2 EXG's indemnity

EXG indemnifies the SPI Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 11.1 not being true and correct.

11.3 EXG warranty certificate

EXG must provide to SPI by 8.00am on the Second Court Date a certificate signed by the EXG Directors and made in accordance with a resolution of the EXG Board stating, as at that date, that the representations or warranties given by EXG in clause 11.1 remain true and correct or, if any such representation or warranty is not true and correct as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or incorrect.

11.4 Qualifications to EXG's representations and warranties

The EXG representations and warranties under clause 11.1 and Schedule 7 are each subject to matters:

- (a) fairly disclosed in the EXG Due Diligence Materials;
- (b) which were fairly disclosed in a document given to ASX for public release in the 2 years prior to the date of this agreement; or
- (c) actually known to SPI (other than matters known by representatives of professional advisers to the extent those representatives are not involved with the Merger).

11.5 SPI's representations and warranties

SPI represents and warrants to EXG (on its own behalf and separately as trustee or nominee for each member of the EXG Board) that each of the statements set out in Schedule 8 is true and correct in all material respects as at the date of this agreement and as at 8.00am on the Second Court Date.

11.6 SPI's indemnity

SPI indemnifies the EXG Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 11.5 not being true and correct.

11.7 SPI warranty certificate

SPI must provide to EXG by 8.00am on the Second Court Date a certificate signed by a director of SPI and made in accordance with a resolution of the SPI Board stating, as at that date, that the representations and warranties given by SPI in clause 11.5 remain true and correct or, if any such representation or

warranty is not true and correct as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or incorrect.

11.8 Qualifications to SPI's representations and warranties

The SPI representations and warranties under clause 11.5 and Schedule 8 are each subject to matters:

- (a) fairly disclosed in the SPI Due Diligence Materials;
- (b) which were fairly disclosed in a document given to ASX for public release in the 2 years prior to the date of this agreement; or
- (c) actually known to EXG (other than matters known by representatives of professional advisers to the extent those representatives are not involved with the Merger).

11.9 Liability of directors and officers

- (a) If the Scheme becomes Effective, each party releases its rights against, and will not make or commence any Action against, any past or present director or employee of the other party in relation to information provided to it by the other party in connection with the Merger containing any statement which is false or misleading to the extent that the past or present director or employee has not engaged in wilful misconduct or fraud.
- (b) Each party holds the releases under clause 11.9(a) in respect of its past and present directors and employees as trustee for those persons.
- (c) This clause 11.9 is subject to any restriction at law and will be read down accordingly.

12. COURT PROCEEDINGS

12.1 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, SPI and EXG must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise;
- (b) external legal advisers representing that party in relation to the Scheme indicates that, in their opinion, an appeal would likely have less than a 50% prospect of success;
- (c) there is, in the bona fide view of the EXG Board, a Superior Proposal which should be recommended in preference to the Scheme; or
- (d) the first attempted appeal to the initial Court refusal to make orders convening the Scheme Meeting or approving the Scheme does not overturn the initial Court's decision,

in which case either party may terminate this agreement in accordance with clause 13.1(g)(iii). A party will not be entitled to terminate this agreement

pursuant to clause 13.1(g)(iii) if the Court's refusal to make the orders was the result of a breach of this agreement by that party.

12.2 Defence of proceedings

- (a) Subject to clause 12.2(b), each of SPI and EXG must vigorously defend, or must cause to be vigorously defended, any lawsuits or other legal proceeding brought against it (or any of its Subsidiaries) challenging this agreement or the completion of the Merger. Neither SPI nor EXG will settle or compromise (or permit any of its Subsidiaries to settle or compromise) any claim brought in connection with this agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- (b) The obligations in clause 12.2(a) do not apply to EXG during a Superior Proposal Period. For the avoidance of doubt, if the Superior Proposal that gave rise to the commencement of the Superior Proposal Period is withdrawn, terminated, rejected, expires or is otherwise concluded and this agreement remains on foot, the obligations in clause 12.2(a) will once again apply.

12.3 Costs

Any costs incurred as a result of the operation of this clause 12 will be borne equally by each party.

13. TERMINATION

13.1 Termination events

Without limiting any other provision of this agreement (including clauses 3.9 and 12.1), this agreement may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective by the End Date unless the Scheme has not become Effective due to a breach by such party of its obligations under this agreement;
- (b) **(lack of support)** at any time prior to 8.00am on the Second Court Date by SPI if any EXG Director who was an EXG Director as at the date of this agreement changes their recommendation or ceases to recommend to Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to their recommendation, or otherwise makes a public statement indicating that it no longer supports the Scheme;
- (c) **(Scheme not approved)** by either party if the resolution submitted to the Scheme Meeting is not approved by the requisite majority;
- (d) **(restraint)** by either party if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme;
- (e) **(EXG competing interest)** by SPI, if a person (other than SPI, a member of the SPI Group or an existing EXG Shareholder) has a Relevant Interest in more than 20% of the EXG Shares;

- (f) **(SPI competing interest)** by EXG, if SPI acquires an entity (other than EXG or a member of the EXG Group) and SPI has a Relevant Interest in more than 20% of the fully paid ordinary shares in that entity;
- (g) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.9(a);
 - (ii) clause 3.9(b); or
 - (iii) clause 12.1;
- (h) **(breach by EXG)** by SPI, if EXG materially breaches a term of this agreement and SPI has, if practicable, given notice to EXG setting out the relevant circumstances and the relevant circumstances continue to exist five (5) Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (i) **(breach by SPI)** by EXG, if SPI materially breaches a term of this agreement and EXG has, if practicable, given notice to SPI setting out the relevant circumstances and the relevant circumstances continue to exist five (5) Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (j) **(Insolvency)** by either party if the other party or any EXG Subsidiary becomes Insolvent; or
- (k) **(agreement)** if agreed to in writing by SPI and EXG.

13.2 Termination

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement.

13.3 Effect of Termination

In the event that a party terminates this agreement, or if this agreement otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this agreement, other than the obligations set out in clauses 10, 12.3, 13.4, 14.5, 15, 16, 17 and 18, will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this agreement.

13.4 Damages

- (a) In addition to the right of termination under clause 13.1 but subject to clauses 13.4(b) and 13.4(c), where there is no appropriate remedy for the breach of this agreement (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of this agreement.
- (b) Despite any other provision in this agreement, where an amount becomes payable to SPI under clause 10.2 and is actually paid to SPI (or is payable, but no demand is made under clause 10.2), SPI cannot make or commence any Action (other than under clause 10) against

EXG which relates to the event that gave rise to the right to make a demand under clause 10.2.

- (c) Despite any other provision in this agreement, where an amount becomes payable to EXG under clause 10.3 and is actually paid to EXG (or is payable, but no demand is made under clause 10.3), EXG cannot make or commence any Action (other than under clause 10) against SPI which relates to the event that gave rise to the right to make a demand under clause 10.3.

14. PUBLIC ANNOUNCEMENTS

14.1 Public announcement of Scheme

Immediately after signing this agreement, EXG and SPI will issue either a joint, or separate public announcements in agreed terms, including a statement by the EXG Directors that, subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of EXG Shareholders, they intend to recommend that EXG Shareholders vote in favour of the Scheme subject to no Superior Proposal being made, in the form substantially set out in Annexure A.

14.2 No Announcement

Neither party may make an announcement relating to the subject matter of this agreement or its termination or make public this agreement (or any of its terms) unless the announcement or publication:

- (a) is required by clause 14.1 or any other provision of this agreement;
- (b) has the prior approval of the other party, such approval not to be unreasonably withheld or delayed; or
- (c) is required to be made by any applicable law or stock exchange rules.

14.3 Notice of Announcement

If a party is required to make an announcement under clause 14.2(c), it must, to the extent practicable, without that party breaching any applicable law, give to the other party:

- (a) such notice as is reasonable in the circumstances of its intention to make the announcement; and
- (b) a draft of the announcement and an announcement, which is reasonable in the circumstances, to comment on the contents of the draft announcement.

14.4 Alternative or Superior Proposal

The requirements of clauses 14.1 and 14.2 do not apply to either party if a Competing Transaction or Superior Proposal has been announced and publicly recommended, promoted or otherwise endorsed by either party and has not been publicly withdrawn.

14.5 Termination of this agreement

If this agreement is terminated under clause 13, either party may disclose by way of announcement to ASX the fact that this agreement has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the announcement prior to its disclosure.

15. CONFIDENTIAL INFORMATION

15.1 Disclosure of SPI Confidential Information

No SPI Confidential Information may be disclosed by EXG to any person except:

- (a) Representatives of EXG or its Related Bodies Corporate requiring the information for the purposes of this agreement; or
- (b) with the consent of SPI which consent may be given or withheld in its absolute discretion; or
- (c) if EXG is required to do so by law or by a stock exchange (but only to the extent required); or
- (d) if EXG is required to do so in connection with legal proceedings relating to this agreement.

15.2 Use of SPI Confidential Information

EXG must use the SPI Confidential Information exclusively for the purpose of due diligence, preparing the Scheme Booklet and implementing the Merger and for no other purpose (and must not make any use of any SPI Confidential Information to the competitive disadvantage of SPI or any of its Related Bodies Corporate).

15.3 Disclosure of EXG Confidential Information

No EXG Confidential Information may be disclosed by SPI to any person except:

- (a) Representatives of SPI or its Related Bodies Corporate requiring the information for the purposes of this agreement; or
- (b) with the consent of EXG which consent may be given or withheld in its absolute discretion; or
- (c) if SPI is required to do so by law or by a stock exchange (but only to the extent required); or
- (d) if SPI is required to do so in connection with legal proceedings relating to this agreement.

15.4 Use of EXG Confidential Information

SPI must use the EXG Confidential Information exclusively for the purpose of due diligence, preparing the Scheme Booklet and implementing the Merger and for no other purpose (and must not make any use of any EXG Confidential

Information to the competitive disadvantage of EXG or any of its Related Bodies Corporate).

15.5 Disclosure by recipient of Confidential Information

Any party disclosing information under clauses 15.1(a) or 15.1(b), or clauses 15.3(a) or 15.3(b), must use reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 15.1 or clause 15.3.

15.6 Excluded Information

Clauses 15.1, 15.2, 15.3, 15.4 and 15.5 do not apply to the Excluded Information.

15.7 Termination

This clause 15 will survive termination (for whatever reason) of this agreement.

16. NOTICES AND OTHER COMMUNICATIONS

16.1 Form - all communications

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

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the details below or, if the recipient has notified otherwise, then marked for attention in the way last notified.

16.2 Initial address and details

The initial address and details of the parties shall be as follows:

Party	Address	Attention	Facsimile	Email
SPI	130 Stirling Highway, North Fremantle, WA 6159	Mr Russell Hardwick	+61 8 6215 0091	russell.hardwick@spitfirematerials.com.au
EXG	Unit 2, 124 Stirling Highway, North Fremantle WA 6159	Mr Rowan Johnston	+61 8 9335 6231	rjohnston@excelsiorgold.com.au

Each party may from time to time change its address and/or details by giving notice pursuant to clause 16.1 to the other parties.

16.3 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 16.1. However, the email:

- (a) must state the first and last name of the sender; and

- (b) must be in plain text format or, if attached to an email, must be an Adobe Portable Document Format (pdf) file.

Communications sent by email are taken to be signed by the named sender.

16.4 Delivery

Communications must be:

- (a) left at the address set out or referred to in the details;
- (b) sent by prepaid ordinary post to the address set out or referred to in the details;
- (c) sent by fax to the fax number set out or referred to in the details;
- (d) sent by email to the address set out or referred to in the details; or
- (e) given in any other way permitted by law.

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

16.5 When taken to be received

Communications are taken to be received:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting;
- (c) (in the case of facsimile) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the facsimile machine from which it was sent or other verification from the time of sending;
- (d) (in the case of email) at the time that the email reaches the addressee's email address; and
- (e) (in the case of delivery by hand) on delivery,

but if the communication would, on the application of clauses (a) to (e), be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

17. GOODS AND SERVICES TAX (GST)

17.1 Consideration GST exclusive

Unless expressly stated otherwise in this agreement, all amounts payable under or in connection with this agreement are exclusive of GST.

17.2 Payment of GST

If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 17.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

17.3 Reimbursements

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

17.4 Calculation of payments

If an amount payable under this agreement is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

17.5 Interpretation

For the purposes of this clause 17:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 17;
- (b) "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

18. MISCELLANEOUS**18.1 Discretion in exercising rights**

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

18.2 Partial exercising of rights

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

18.3 No liability for loss

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

18.4 Approvals and consents

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

18.5 Conflict of interest

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

18.6 Remedies cumulative

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

18.7 Variation and waiver

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

18.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on the Implementation Date.

18.9 Indemnities

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

18.10 Enforceability

For the purpose of this agreement:

- (a) EXG is taken to be acting as agent and trustee on behalf of and for the benefit of all EXG Indemnified Parties; and

- (b) SPI is taken to be acting as agent and trustee on behalf of and for the benefit of all SPI Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

18.11 Further steps

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

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

18.12 Construction

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

18.13 Costs

Subject to clause 10, the parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation.

18.14 Entire agreement

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

18.15 Assignment

Subject to clause 4.3, a party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the consent of the other party.

18.16 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 18.16(a) and 18.16(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

18.17 Governing law

This agreement is governed by the laws of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waive any right they might have to claim that those courts are an inconvenient forum.

18.18 Counterparts

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

SCHEDULE 1 – EXG PRESCRIBED EVENTS

1. **(Conversion)** EXG or any of its Subsidiaries converts all or any of its securities into a larger or smaller number of securities.
2. **(Reduction of share capital)** EXG or a Subsidiary of EXG resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
3. **(Buy-back)** EXG or any of its Subsidiaries:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
4. **(Issuing or granting shares or options)** EXG or any of its Subsidiaries issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option or right to an EXG Share excluding:
 - (a) any issue or grant contemplated by this agreement or the Scheme; and
 - (b) any EXG Shares issued by EXG as a result of the exercise of existing EXG Options or vested EXG Performance Rights.
5. **(Change to terms of EXG Options)** EXG (or the EXG Board) makes any amendment to the terms of issue of any EXG Option, where, as a consequence, any one or more of the following occurs:
 - (a) the period for exercise of any EXG Option is extended;
 - (b) the number of EXG Options that are exercisable at any time is increased;
 - (c) the earliest date for exercise of any EXG Options is brought forward;
 - (d) the exercise price of any EXG Option is reduced; or
 - (e) the number of EXG Shares to be issued on exercise of any EXG Options is increased.
6. **(Issue convertible securities)** EXG or any of its Subsidiaries issues or agrees to issue, securities or other instruments convertible into shares.
7. **(Distribution)** EXG or any of its Subsidiaries makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
8. **(Constitution)** EXG or any of its Subsidiaries adopts a new constitution, or modifies or repeals its constitution or a provision of it.
9. **(Change to accounting policies)** EXG or any of its Subsidiaries makes any change to its accounting practices or policies, other than to comply with generally accepted Australian Accounting Standards and any domestically accepted international Accounting Standards or electing to form a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth).

10. **(Debenture)** EXG issues, or agrees to issue or grants an option to subscribe for debentures (as defined in section 9 of the Corporations Act).
11. **(Disposals)** EXG or any of its Subsidiaries disposes, or agrees to dispose of the whole or a material or substantial part of its business or property.
12. **(Security)** EXG or or any of its Subsidiaries charges, or agrees to charge, the whole or a substantial part, of its business or property, or creates or alters, or agrees to create or alter, any mortgage, charge lien, security interest or other Encumbrance over the whole or a substantial part of its business or property.
13. **(Litigation)** EXG or any of its Related Bodies Corporate commences material litigation.
14. **(Financial indebtedness)** Other than in the ordinary course of business or with the prior written consent of SPI, EXG incurs any material financial indebtedness or issues any debt securities.
15. **(Benefits to officers and employees)** other than in accordance with an existing contract in place at the date of this agreement or with the consent of SPI (such consent not to be unreasonably withheld), EXG:
 - (a) increases the remuneration of, or otherwise varies, the employment arrangements with any of its directors or employees;
 - (b) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any executive or employee share plans); or
 - (c) pays any of its directors or officers a termination or retention payment;
16. **(Material Contracts)** EXG:
 - (a) changes the terms of any Material Contract to the material detriment of SPI;
 - (b) terminates any Material Contract;
 - (c) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than in accordance with past practice and consistent with the contract terms;
 - (d) waives any material claims or rights under, or waives the benefit of, any provisions of any Material Contract.
17. **(Material Transaction)** EXG enters into a or undertakes an EXG Material Transaction.
18. **(EXG Material Permits)** EXG or a Subsidiary of EXG disposes of, relinquishes or surrenders all or part of any of the EXG Material Permits or any interest in the EXG Material Permits.
19. **(Insolvency)** EXG or any of its Related Bodies Corporate becomes Insolvent.
20. **(Acquisitions, disposals or tenders)** EXG or any of its Subsidiaries:
 - (a) acquires or disposes of;

- (b) agrees to acquire or dispose of;
- (c) offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking the value of which exceeds \$500,000.

Provided that (if otherwise caught by the terms of this definition) an acquisition of any business, assets (or interest in such assets), entity or undertaking by EXG, or a contract or commitment of the kind referred to above, will not be an EXG Prescribed Event if the terms of that acquisition, or potential contract or commitment, as the case may be, have been fairly disclosed either to the market generally or to SPI in writing prior to the execution of this agreement and the acquisition, contract or commitment as the case may be, proceeds substantially in accordance with those terms.

SCHEDULE 2 – SPI PRESCRIBED EVENTS

1. **(Conversion)** SPI or a Subsidiary of SPI converts all or any of its securities into a larger or smaller number of securities.
2. **(Reduction of share capital)** SPI or a Subsidiary of SPI resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
3. **(Buy-back)** SPI or a Subsidiary of SPI:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
4. **(Issuing or granting shares or options)** SPI or any of its Subsidiaries issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option or right to an SPI Share excluding:
 - (a) any issue or grant contemplated by this agreement or the Scheme; and
 - (b) any SPI Shares issued by SPI as a result of the exercise of existing SPI Options or SPI Performance Rights.
5. **(Change to terms of SPI Options)** SPI (or the SPI Board) makes any amendment to the terms of issue of any SPI Option, where, as a consequence, any one or more of the following occurs:
 - (a) the period for exercise of any SPI Option is extended;
 - (b) the number of SPI Options that are exercisable at any time is increased;
 - (c) the earliest date for exercise of any SPI Options is brought forward;
 - (d) the exercise price of any SPI Option is reduced; or
 - (e) the number of SPI Shares to be issued on exercise of any SPI Options is increased.
6. **(Issue convertible securities)** SPI or any of its Subsidiaries issues or agrees to issue, securities or other instruments convertible into shares.
7. **(Distribution)** SPI or any of its Subsidiaries makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
8. **(Constitution)** SPI or any of its Subsidiaries adopts a new constitution, or modifies or repeals its constitution or a provision of it.
9. **(Change to accounting policies)** SPI or any of its Subsidiaries makes any change to its accounting practices or policies, other than to comply with generally accepted Australian Accounting Standards and any domestically accepted international Accounting Standards or electing to form a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth).
10. **(Debenture)** SPI issues, or agrees to issue or grants an option to subscribe for debentures (as defined in section 9 of the Corporations Act).

11. **(Disposals)** SPI or any of its Subsidiaries disposes, or agrees to dispose of the whole or a material or substantial part of its business or property.
12. **(Security)** SPI or or any of its Subsidiaries charges, or agrees to charge, the whole or a substantial part, of its business or property, or creates or alters, or agrees to create or alter, any mortgage, charge lien, security interest or other Encumbrance over the whole or a substantial part of its business or property.
13. **(Litigation)** SPI or any of its Related Bodies Corporate commences material litigation.
14. **(Financial indebtedness)** save as otherwise provided for under clause 6.4 or with the prior written consent of EXG, other than in the ordinary course of business, SPI incurs any material financial indebtedness or issues any debt securities.
15. **(Benefits to officers and employees)** other than in accordance with an existing contract in place at the date of this agreement or with the consent of EXG (such consent not to be unreasonably withheld), SPI:
 - (a) increases the remuneration of, or otherwise varies, the employment arrangements with any of its directors or employees;
 - (b) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any executive or employee share plans); or
 - (c) pays any of its directors or officers a termination or retention payment;
16. **(Material Contracts)** SPI:
 - (a) changes the terms of any Material Contract to the material detriment of EXG;
 - (b) terminates any Material Contract;
 - (c) pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than in accordance with past practice and consistent with the contract terms;
 - (d) waives any material claims or rights under, or waives the benefit of, any provisions of any Material Contract.
17. **(Material Transaction)** SPI enters into a or undertakes an SPI Material Transaction.
18. **(SPI Material Permits)** SPI or a Subsidiary of SPI disposes of, relinquishes or surrenders all or part of any of the SPI Material Permits or any interest in the SPI Material Permits.
19. **(Insolvency)** SPI or any of its Related Bodies Corporate becomes Insolvent.
20. **(Acquisitions, disposals or tenders) SPI or any of its Subsidiaries:**
 - (a) acquires or disposes of;
 - (b) agrees to acquire or dispose of;
 - (c) offers, proposes, announces a bid or tenders for,any business, assets, entity or undertaking the value of which exceeds \$500,000.

Provided that (if otherwise caught by the terms of this definition) an acquisition of any business, assets (or interest in such assets), entity or undertaking by SPI, or a contract or commitment of the kind referred to above, will not be an SPI Prescribed Event if the terms of that acquisition, or potential contract or commitment, as the case may be, have been fairly disclosed either to the market generally or to EXG in writing prior to the execution of this agreement and the acquisition, contract or commitment as the case may be, proceeds substantially in accordance with those terms.

SCHEDULE 3 – CONDITIONS PRECEDENT (CLAUSE 3.1)

Condition	Party entitled to benefit	Party responsible
<p>1. Regulatory Approvals</p> <p>Before 8:00am on the Second Court Date:</p> <p>(a) (ASIC and ASX) ASIC and ASX have issued or provided (and not withdrawn, revoked or varied) such consents, waivers, modifications, and/or approvals or have done such other acts which are necessary or the parties agree are reasonably desirable to implement the Scheme. If such consents, waivers, modifications and/or approvals are subject to conditions those conditions must be acceptable to EXG and SPI (both acting reasonably);</p> <p>(b) (Regulatory Authority) all other consents, waivers and approvals of a Regulatory Authority which SPI and EXG, consider are necessary or desirable to implement the Scheme are obtained. If such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to EXG and SPI (both acting reasonably); and</p> <p>(c) (Court orders) no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the implementation of any material aspect of the Merger and no such order, decree, ruling, other action or refusal is in effect.</p>	<p>Both</p> <p>Both</p> <p>Both</p>	<p>Both</p> <p>Both</p> <p>Both</p>
<p>2. Scheme approval</p> <p>The Scheme is approved with or without modification, in accordance with section 411(4)(a) of the Corporations Act, at the Scheme Meeting.</p>	<p>Cannot be waived</p>	<p>EXG</p>

Condition	Party entitled to benefit	Party responsible
<p>3. Court approval</p> <p>The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act (with or without modifications which are acceptable to both SPI and EXG).</p>	Cannot be waived	EXG
<p>4. Court conditions</p> <p>Such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to SPI and EXG being satisfied.</p>	Cannot be waived	EXG
<p>5. Third party consents</p> <p>All other consents, waivers and approvals of a third party which SPI and EXG agree, are necessary to implement the Merger are obtained. If such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to EXG and SPI (both acting reasonably).</p>	Both	Both
<p>6. Independent Expert</p> <p>The Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC.</p>	EXG	EXG
<p>7. No EXG prescribed event</p> <p>No EXG Prescribed Event occurs between the date of this agreement and 8.00am on the Second Court Date.</p>	SPI	EXG
<p>8. No SPI prescribed event</p> <p>No SPI Prescribed Event occurs between the date of this agreement and 8.00am on the Second Court Date.</p>	EXG	SPI
<p>9. No EXG material adverse change</p> <p>No EXG Material Adverse Change occurs or becomes apparent between the date of this agreement and 8:00am on the Second Court Date.</p>	SPI	EXG
<p>10. No SPI material adverse change</p> <p>No SPI Material Adverse Change occurs or becomes apparent between the date of this agreement and 8:00am on the Second Court Date.</p>	EXG	SPI
<p>11. EXG representations and warranties</p> <p>EXG's representations and warranties set out in Schedule 7 are true and correct in all</p>	SPI	EXG

Condition	Party entitled to benefit	Party responsible
material respects as at the date of this agreement and as at 8:00am on the Second Court Date.		
12. SPI representations and warranties SPI's representations and warranties set out in Schedule 8 are true and correct in all material respects as at the date of this agreement and as at 8:00am on the Second Court Date.	EXG	SPI
13. Unexpired EXG Options Before 8:00am on the Second Court Date, binding agreements have been entered into in relation to the Unexpired EXG Options in accordance with clause 4.7.	SPI	EXG
14. EXG Performance Rights Before 8:00am on the Second Court Date, binding agreements have been entered into in relation to the EXG Performance Rights in accordance with clause 4.8.	SPI	EXG
15. EXG Loan Share Plans 16. Before 8:00am on the Second Court Date, binding agreements have been entered into with each holder of EXG Shares issued under the EXG Loan Share Plans in accordance with clause 4.9.	Both	Both

SCHEDULE 4 – TIMETABLE (CLAUSE 5.1)

Event	Date
Lodge Scheme Booklet with ASIC	16 July 2018
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC and delivered to ASX	16 July 2018
First Court Date	6 August 2018
Printing and despatch of Scheme Booklet	6 to 9 August 2018
Scheme Meeting held	11 September 2018
Second Court Date	12 September 2018
Lodge Court order with ASIC (Effective Date)	12 September 2018
Record Date (Effective Date plus three (3) Business Days)	17 September 2018
Implementation Date (Record Date plus five (5) Business Days)	24 September 2018

SCHEDULE 5 – EXG’S OBLIGATIONS (CLAUSE 6.1)

1. **(EXG Information)** ensure that the EXG Information included in the Scheme Booklet complies with the Corporations Act, the Corporations Regulations, the Listing Rules and ASIC Regulatory Guide 60.
2. **(Further EXG Information)** provide to SPI and Scheme Participants such further or new EXG Information as may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting as may be necessary to ensure that the EXG Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
3. **(Independent Expert)** promptly appoint the Independent Expert approved in writing by SPI and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert’s Report for the Scheme Booklet.
4. **(Provide a copy of the Independent Expert’s Report)** on receipt, provide SPI with a copy of all drafts of the Independent Expert’s Report received by EXG from the Independent Expert from time to time for review for factual accuracy.
5. **(apply for ASX and ASIC relief)** use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX or ASIC as may be required to facilitate implementation of the Scheme.
6. **(Promote merits of the Merger)** participate in and ensure that the EXG Board participates in efforts reasonably requested by SPI to promote the merits of the Merger, including meeting with key members of EXG at the reasonable request of SPI, unless and until the recommendations of the EXG Directors are withdrawn or adversely modified because of a Superior Proposal or because the Independent Expert concludes that the Scheme is not in the best interests of Scheme Participants.
7. **(Registry details)** subject to the terms of the Scheme:
 - (a) provide all necessary information about the Scheme Participants to SPI which SPI requires in order to assist SPI to solicit votes at the Scheme Meeting; and
 - (b) provide all necessary directions to the Registry to promptly provide any information that SPI reasonably requests in relation to the Register, including any sub-register, and, where requested by SPI, EXG must procure such information to be provided to SPI in such electronic form as is reasonably requested by SPI.
8. **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
9. **(Court application and representation)** apply to the Court for an order under section 411(1) of the Corporations Act directing EXG to convene the Scheme Meeting and engage counsel reasonably experienced in schemes of arrangement to represent EXG in all Court proceedings related to the Scheme and consult with SPI in relation to the content of any document required for the purpose of the Scheme (including originating process, affidavits, submissions and

draft minutes of Court orders) and take into account all reasonable comments provided for and on behalf of SPI in relation to such documents.

10. **(Registration of explanatory statement)** request 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.
11. **(ASIC review)** keep SPI regularly informed of any matters raised by ASIC in relation to the Scheme Booklet, and use all reasonable endeavours, in co-operation with SPI, to resolve any such matters.
12. **(Send Scheme Booklet)** send the Scheme Booklet to Scheme Participants as soon as practicable after the Court orders EXG to convene the Scheme Meeting and otherwise in accordance with the Timetable.
13. **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of Scheme Participants for the Scheme and, for this purpose, the EXG Directors must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key Scheme Participants at the reasonable request of SPI.
14. **(Proxy reports)** cause the Registry to report to it and SPI and their Representatives on the status of proxy forms received by the Registry for the Scheme Meeting, at ten (10) Business Days before the Scheme Meeting, at each subsequent Business Day up to the deadline for receipt of proxy forms and at such deadline. Provide to SPI such other information as it may receive concerning the voting intentions of Scheme Participants.
15. **(Court order)** apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act.
16. **(Certificate)** provide the Court on the Second Court Date with a certificate confirming (in respect of matters within its knowledge) whether all the conditions precedent as set out in Schedule 3 (other than the conditions relating to Court approval of the Scheme, being items 3 and 4) have been satisfied or waived in accordance with the terms of this agreement.
17. **(Lodge)** on the Second Court Date lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the Scheme Participants at the Scheme Meeting in accordance with section 411(10) of the Corporations Act.
18. **(Register information)** close the Register as at 5.00pm on the Record Date.
19. **(Registration)** register all transfers of Scheme Shares to SPI on the Implementation Date.
20. **(Listing)** take all reasonable steps to maintain EXG's listing on ASX, notwithstanding any suspension of the quotation of EXG Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.
21. **(Compliance with laws)** use its reasonable endeavours to do everything reasonably within its power to ensure that the Scheme is effected in accordance with all laws and regulations applicable in relation to the Scheme.

22. **(Suspension of incentive plans)** with effect from date of this agreement, suspend all of its executive and employee incentive plans that will or could result in securities in EXG being issued to any person.
23. **(Termination of incentive plans)** subject to Court approval of the Scheme, but with effect from the Implementation Date or such later date agreed by the parties acting reasonably, terminate all of its executive and employee incentive plans that will or could result in securities in EXG being issued to any person and cancel all EXG Performance Rights on issue.
24. **(post Implementation EXG Board)** on or promptly following the Effective Date, EXG will use its best endeavours to ensure that:
- (a) the two (2) directors nominated by SPI in writing to EXG at least five (5) Business Days prior to the Effective Date are appointed to the EXG Board, subject to such nominees providing written consents to act as a director of EXG; and
 - (b) two (2) EXG Directors nominated by SPI in writing to EXG at least five (5) Business Days prior to the Effective date, other than those appointed by SPI in accordance with paragraph (a) above, provide written resignations as a Director to EXG, acknowledging that the director has no claim against EXG or SPI; and
 - (c) the total number of EXG Directors on the EXG Board, including those appointed by SPI in accordance with paragraph (a) above, does not exceed five (5).
25. **(Other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

SCHEDULE 6 – SPI'S OBLIGATIONS (CLAUSE 6.2)

1. **(SPI Information)** prepare and promptly provide to EXG for inclusion in the Scheme Booklet such SPI Information as EXG reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, Corporations Regulations, the Listing Rules or ASIC Regulatory Guide 60).
2. **(Further SPI Information)** promptly provide to EXG such further or new SPI Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the SPI Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
3. **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet.
4. **(apply for ASX and ASIC relief)** use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX or ASIC as may be required to facilitate Implementation of the Scheme.
5. **(Representation)** if reasonably required by the parties, procure that it is represented by counsel reasonably experienced in schemes of arrangement at the court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel SPI must undertake (if requested by the court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme.
6. **(Certificate)** provide the Court on the Second Court Date with a certificate confirming (in respect of matters within its knowledge) whether all the conditions precedent as set out in Schedule 3 (other than the conditions relating to Court approval of the Scheme, being items 3 and 4) have been satisfied or waived in accordance with the terms of this agreement.
7. **(Deed Poll)** prior to the Scheme Booklet being sent to EXG Shareholders, sign and deliver the Deed Poll.
8. **(Share transfer)** if the Scheme becomes Effective, accept a transfer of Scheme Shares as contemplated by clause 4.1(a) and the Scheme.
9. **(Compliance with laws)** use its reasonable endeavours to do everything reasonably within its power to ensure that the Scheme is effected in accordance with all laws and regulations applicable in relation to the Scheme.
10. **(Suspension of incentive plans)** with effect from date of this agreement, suspend all of its executive and employee incentive plans that will or could result in securities in SPI being issued to any person.

11. **(post Implementation SPI Board)** on or promptly following the Effective Date, SPI will use its best endeavours to ensure that:
- (a) Mr David Hatch, Mr Sebastiano Randazzo and Mr Rowan Johnston are appointed to the SPI Board, subject only to SPI receiving written consents to act as directors of SPI;
 - (b) Mr Roger Mitchell resigns from the SPI Board and provides written resignation as a director to SPI, acknowledging that the director has no claim against SPI or EXG; and
 - (c) the total number of directors on the SPI Board, including Mr David Hatch, Mr Sebastiano Randazzo and Mr Rowan Johnston does not exceed six (6).
12. **(Other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

SCHEDULE 7 – EXG’S REPRESENTATIONS AND WARRANTIES (CLAUSE 11.1)

1. **(Incorporation)** Each member of the EXG Group is a valid existing corporation registered under the laws of its place of incorporation.
2. **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate action of EXG.
3. **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
4. **(No contravention or impediment)** this agreement and performance by EXG of its obligations under this agreement do not contravene the constitution of any member of the EXG Group or any law by which any member of the EXG Group is bound and does not result in:
 - (a) any monies borrowed by any member of the EXG Group being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
 - (b) any agreement or other instrument to which any member of the EXG Group is party being terminated or modified or any action being taken or arising thereunder; or
 - (c) the interest of EXG in any Subsidiary being terminated or modified.
5. **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms.
6. **(Disclosure)** EXG has provided to SPI all information requested in writing by SPI in connection with the Merger and actually known to EXG as at the date of this agreement and has not knowingly modified or withheld any information from SPI.
7. **(EXG Information)** the EXG Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the Listing Rules and ASIC Regulatory Guide 60.
8. **(Due diligence)** to the best of the knowledge of each EXG Specified Person as at the date of this agreement, all EXG Due Diligence Materials were prepared in good faith with due care, skill and diligence, are true and correct in all material respects and are not misleading in any material respect, whether by way of omission or otherwise.
9. **(Advisers)** EXG has provided complete and accurate information regarding fees in all retainers and mandates with financial advisers and fee estimates for other advisers in relation to the Merger and any Competing Transaction and any other

transaction where such retainer or mandate is current, or under which the EXG Group still has obligations.

10. **(Reliance)** the EXG Information contained in the Scheme Booklet will be included in good faith and on the understanding that SPI and its directors will rely on that information for the purposes of considering and approving the SPI Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
11. **(Further information)** EXG will, as a continuing obligation, provide to SPI all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of item 6 of this Schedule 7 if it applied as at the date upon which that information arose.
12. **(Continuous disclosure)** EXG is not in breach of its continuous disclosure obligations under the Corporations Act and the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.
13. **(Periodic disclosure)** the periodic financial disclosures made by EXG in its annual financial report and half-yearly financial report were not misleading or deceptive when made and are prepared in accordance with the Corporations Act and with all relevant Accounting Standards and give a true and fair view of the financial position and performance of the EXG Group as at the date they were made.
14. **(Opinions)** any statement of opinion or belief contained in the EXG Information is honestly held and there are reasonable grounds for holding the opinion or belief.
15. **(Provision of information to the Independent Expert)** all information provided by or on behalf of EXG to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report.
16. **(Compliance)** EXG and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
17. **(Insolvency)** no member of the EXG Group is Insolvent.
18. **(No default)** neither it nor any of its Subsidiaries is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect, and to the best of the knowledge of each EXG Specified Person, no other party to any such document, agreement or instrument is in material breach thereof or material default thereunder.
19. **(Material Contracts)** each Material Contract is in full force and effect and constitutes a valid and binding obligation of any member of the EXG Group party thereto and is enforceable against such member of the EXG Group in accordance with its terms. To the best of the knowledge of each EXG Specified

Person, each Material Contract is a valid and binding obligation of each other party thereto and enforceable against such other party in accordance with its terms.

20. (EXG Material Permits):

- (a) EXG is the unencumbered legal and beneficial owner of the EXG Material Permits and, other than as disclosed to SPI in the EXG Due Diligence Materials, there are no royalties payable to any third party (other than a government agency) in respect of future production from the EXG Material Permits;
- (b) The EXG Material Permits are valid, subsisting, in full force and effect and in good standing in terms of applicable laws and regulations in Western Australia;
- (c) Other than seeking exemptions for expenditure where required, EXG is not in default in the due and punctual observance of a performance of its obligations under the provisions of the EXG Material Permits;
- (d) so far as EXG is aware, EXG has:
 - (i) complied in all material respects with all laws and regulations application to the EXG Material Permits and with all orders of government agencies having jurisdiction over the EXG Material Permits;
 - (ii) has not been convicted of any material offence under any environmental law and to EXG's knowledge, there are no orders issued by any government agency or any claims relating to the breach of any environmental law or environmental permit against EXG; and
 - (iii) complied in all material respects with all applicable environmental laws and all environmental permits necessary for the conduct and operation of the business as presently conducted; and
- (e) so far as EXG is aware, EXG has not received any notice or information regarding any circumstance that would result in a material breach of the terms and conditions of the EXG Material Permits or any application for renewal not being granted; and
- (f) all fees, charges, penalties, fines and royalties in respect of the EXG Material Permits have been paid and all renewal applications submitted on time and in accordance with the terms of all applicable mining laws in Western Australia.

21. (Securities) EXG's issued securities as at the date of this agreement are:

- (a) 835,617,242 EXG Shares;
- (b) 14,000,000 EXG Options; and
- (c) 9,829,268 EXG Performance Rights,

and EXG has not issued, or agreed to issue, any other securities or instruments which are still outstanding and which may convert into EXG Shares or any other securities in EXG.

22. **(Intellectual property)** the conduct of the business of EXG and its Subsidiaries does not infringe or otherwise violate the intellectual property of, or obligations of confidence owed to, any third party, and no claims have been made with respect to the foregoing. To the best of the knowledge of each EXG Specified Person, no third party has infringed or otherwise violated the intellectual property used in or necessary for the conduct of EXG's business. Neither EXG nor any Subsidiary of EXG is party to any open source software licenses that would require any software of the business to be made available at no charge.
23. **(No Encumbrances)** there is no Encumbrance over all or any of its assets or revenues.
24. **(Current Actions)** Other than as advised to SPI, neither EXG nor any of its Subsidiaries is:
 - (a) a party to or the subject of any Action; or
 - (b) the subject of any ruling, judgment, order or decree by any Regulatory Authority or any other person.
25. **(Pending, threatened or anticipated Actions)** to the best of the knowledge of each EXG Specified Person, there is no Action, judgment, order or decree pending, threatened or anticipated, against EXG or any of its Subsidiaries.

SCHEDULE 8 – SPI’S REPRESENTATIONS AND WARRANTIES (CLAUSE 11.5)

1. **(Incorporation)** Each member of the SPI Group is a valid existing corporation registered under the laws of its place of incorporation.
2. **(Execution)** the execution and delivery of this agreement has been properly authorised by all necessary corporate action of SPI.
3. **(Corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms.
4. **(No contravention or impediment)** this agreement and performance by SPI of its obligations under this agreement do not contravene the constitution of any member of the SPI Group or any law by which any member of the SPI Group is bound and does not result in:
 - (a) any monies borrowed by any member of the SPI Group being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
 - (b) any agreement or other instrument to which any member of the SPI Group is party being terminated or modified or any action being taken or arising thereunder; or
 - (c) the interest of SPI in any Subsidiary being terminated or modified.
5. **(Binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms.
6. **(Disclosure)** SPI has provided to EXG all information requested in writing by EXG in connection with the Merger and actually known to SPI as at the date of this agreement and has not knowingly modified or withheld any information from EXG.
7. **(SPI Information)** the SPI Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the Listing Rules and ASIC Regulatory Guide 60.
8. **(Due diligence)** to the best of the knowledge of each SPI Specified Person as at the date of this agreement, all SPI Due Diligence Materials were prepared in good faith with due care, skill and diligence, are true and correct in all material respects and are not misleading in any material respect, whether by way of omission or otherwise.
9. **(Advisers)** SPI has provided complete and accurate information regarding fees in all retainers and mandates with financial advisers and fee estimates for other advisers in relation to the Merger and any Competing Transaction and any other transaction where such retainer or mandate is current, or under which the EXG Group still has obligations.

10. **(Reliance)** the SPI Information provided to EXG for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that EXG and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act.
11. **(Further information)** SPI will, as a continuing obligation, provide to EXG all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of item 6 of this Schedule 8 if it applied as at the date on which that information arose.
12. **(Continuous disclosure)** SPI is not in breach of its continuous disclosure obligations under the Corporations Act and the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.
13. **(Periodic disclosure)** the periodic financial disclosures made by SPI in its annual financial report and half-yearly financial report were not misleading or deceptive when made and are prepared in accordance with the Corporations Act and with all relevant Accounting Standards and give a true and fair view of the financial position and performance of the SPI Group as at the date they were made.
14. **(Opinions)** any statement of opinion or belief contained in the SPI Information is honestly held and there are reasonable grounds for holding the opinion or belief.
15. **(Provision of information to Independent Expert)** all information provided by or on behalf of SPI to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report.
16. **(Compliance)** SPI and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
17. **(Insolvency)** excluding intercompany loans, no member of the SPI Group is Insolvent.
18. **(No default)** neither it nor any of its Subsidiaries is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect, and to the best of the knowledge of each SPI Specified Person, no other party to any such document, agreement or instrument is in material breach thereof or material default thereunder.
19. **(Material Contracts)** each Material Contract is in full force and effect and constitutes a valid and binding obligation of any member of the SPI Group party thereto and is enforceable against such member of the SPI Group in accordance with its terms. To the best of the knowledge of each SPI Specified Person, each Material Contract is a valid and binding obligation of each other party thereto and enforceable against such other party in accordance with its terms.

20. (SPI Material Permits):

- (a) SPI is the unencumbered legal and beneficial owner of the SPI Material Permits and, other than as disclosed to EXG in the SPI Due Diligence Materials, publicly available information and Schedule 11, there are no royalties payable to any third party (other than a government agency) in respect of future production from the SPI Material Permits;
- (b) The SPI Material Permits are valid, subsisting, in full force and effect and in good standing in terms of applicable laws and regulations in Western Australia;
- (c) Other than seeking exemptions for expenditure where required, SPI is not in default in the due and punctual observance of a performance of its obligations under the provisions of the SPI Material Permits;
- (d) so far as SPI is aware, SPI has:
 - (i) complied in all material respects with all laws and regulations application to the SPI Material Permits and with all orders of government agencies having jurisdiction over the SPI Material Permits;
 - (ii) has not been convicted of any material offence under any environmental law and to SPI's knowledge, there are no orders issued by any government agency or any claims relating to the breach of any environmental law or environmental permit against SPI; and
 - (iii) complied in all material respects with all applicable environmental laws and all environmental permits necessary for the conduct and operation of the business as presently conducted;
- (e) so far as SPI is aware, SPI has not received any notice or information regarding any circumstance that would result in a material breach of the terms and conditions of the SPI Material Permits or any application for renewal not being granted; and
- (f) all fees, charges, penalties, fines and royalties in respect of the SPI Material Permits have been paid and all renewal applications submitted on time and in accordance with the terms of all applicable mining laws in Western Australia.

21. (Securities) SPI's issued securities as at the date of this agreement are:

- (a) 521,068,820 SPI Shares;
- (b) 43,362,635 SPI Options; and
- (c) 24,300,000 SPI Performance Rights,

and SPI has not issued, or agreed to issue, any other securities or instruments which are still outstanding and which may convert into SPI Shares or any other securities in SPI.

22. (Intellectual property) the conduct of the business of SPI and its Subsidiaries does not infringe or otherwise violate the intellectual property of, or obligations of

confidence owed to, any third party, and no claims have been made with respect to the foregoing. To the best of the knowledge of each SPI Specified Person, no third party has infringed or otherwise violated the intellectual property used in or necessary for the conduct of SPI's business. Neither SPI nor any Subsidiary of SPI is party to any open source software licenses that would require any software of the business to be made available at no charge.

23. **(No Encumbrances)** there is no Encumbrance over all or any of its assets or revenues.
24. **(Current Actions)** neither SPI nor any of its Subsidiaries is:
 - (a) a party to or the subject of any Action; or
 - (b) the subject of any ruling, judgment, order or decree by any Regulatory Authority or any other person.
25. **(Pending, threatened or anticipated Actions)** to the best of the knowledge of each SPI Specified Person, there is no Action, judgment, order or decree pending, threatened or anticipated, against SPI or any of its Subsidiaries.

**SCHEDULE 9 – CONSIDERATION FOR CANCELLATION OF EXG
UNEXPIRED OPTIONS**

EXG Options			SPI Options		
Number	Exercise Price	Expiry Date	Number	Exercise Price	Expiry Date
14,000,000	\$0.05	24 November 2018	6,340,580	\$0.1104	24 November 2018

SCHEDULE 10 – EXG MATERIAL PERMITS

Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
Bardoc Central	L 24/148	21/11/1991	20/11/2021	GPM 100%
Bardoc Central	M 24/11	24/03/1983	23/03/2025	GPM 100%
Bardoc Central	M 24/43	16/10/1984	15/10/2026	GPM 100%
Bardoc Central	M 24/83	03/04/1986	02/04/2028	GPM 100%
Bardoc Central	M 24/99	03/12/1986	02/12/2028	GPM 100%
Bardoc Central	M 24/121	03/11/1987	02/11/2029	GPM 100%
Bardoc Central	M 24/122	22/01/1988	21/01/2030	GPM 100%
Bardoc Central	M 24/135	11/06/1987	10/06/2029	GPM 100%
Bardoc Central	M 24/244	08/09/1988	07/09/2030	GPM 100%
Bardoc Central	M 24/326	15/08/1989	14/08/2031	GPM 100%
Bardoc Central	M 24/854	04/04/2001	03/04/2022	GPM 100%
Bardoc Central	M 24/869	22/10/2003	21/10/2024	GPM 100%
Bardoc Central	M 24/870	22/10/2003	21/10/2024	GPM 100%
Bardoc Central	M 24/871	22/10/2003	21/10/2024	GPM 100%
Bardoc Central	M 24/886	23/04/2004	22/04/2025	GPM 100%
Bardoc Central	M 24/887	23/04/2004	22/04/2025	GPM 100%
Bardoc Central	M 24/888	23/04/2004	22/04/2025	GPM 100%
Bardoc Central	M 24/364	28/03/1990	27/03/2032	GPM 100%

Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
Bardoc Central	P 24/4757	04/03/2014	03/03/2018 (Extension of term lodged at DMIRS)	GPM 80% & Silvertree 20%
Bardoc Central	P 24/4758	11/03/2014	10/03/2018 – (Extension of term lodged at DMIRS)	GPM 80% & Silvertree 20%
Bardoc Central	M 24/951	17/04/2015	16/04/2036	GPM 100%
Bardoc Central	L 24/202	16/02/2015	15/02/2036	GPM 100%
Bardoc Central	L 24/203	16/02/2015	15/02/2036	GPM 100%
Bardoc Central	L 24/209	16/01/2015	15/01/2036	GPM 100%
Bardoc Central	L 24/223	29/01/2016	18/01/2037	GPM 100%
Bardoc South	M 24/133	30/12/1987	29/12/2029	GPM 100%
Bardoc South	M 24/134	30/12/1987	29/12/2029	GPM 100%
Bardoc South	M 24/348	11/01/1990	10/01/2032	GPM 100%
Bardoc South	M 24/471	26/05/1999	25/05/2020	GPM 100%
Bardoc South	M 24/491	21/05/1999	20/05/2020	GPM 100%
Bardoc South	M 24/532	21/05/1999	20/05/2020	GPM 100%
Bardoc South	M 24/889	05/08/2005	04/08/2026	GPM 100%
Bardoc South	M 24/890	05/08/2005	04/08/2026	GPM 100%
Bardoc South	M 24/891	05/08/2005	04/08/2026	GPM 100%
Bardoc South	M 24/892	05/08/2005	04/08/2026	GPM 100%

Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
Bardoc South	M 24/952	16/09/2015	15/09/2036	GPM 100%
Bardoc South	P 24/4587	14/03/2012	13/03/2020	GPM 100%
Bardoc South	P 24/4816	30/01/2015	29/01/2019	GPM 100%
Bardoc South	M 24/942	15/01/2013	14/01/2034	GPM 95% & Schorer 5%
Bardoc South	M 24/943	15/01/2013	14/01/2034	GPM 100%
Bardoc South	M 24/955	07/07/2016	06/07/2037	GPM 100%
Bardoc Extended	M 24/96	08/10/1986	07/10/2028	GPM 100%
Bardoc Extended	M 24/146	22/04/1988	21/04/2030	GPM 100%
Bardoc Extended	M 24/395	20/10/1992	19/10/2034	GPM 100%
Bardoc Extended	M 24/405	04/02/1993	03/02/2035	GPM 100%
Bardoc Extended	M 24/420	20/10/1993	19/10/2035	GPM 100%
Bardoc Extended	M 24/469	15/03/1995	14/03/2037	GPM 100%
Bardoc Extended	M 24/487	21/05/1999	20/05/2020	GPM 100%
Bardoc Extended	M 24/498	21/05/1999	20/05/2020	GPM 100%
Bardoc Extended	M 24/510	21/05/1999	20/05/2020	GPM 100%
Bardoc Extended	M 24/512	21/05/1999	20/05/2020	GPM 100%
Bardoc Extended	P 24/5060	06/09/2016	05/09/2020	GPM 100%
Bardoc Extended	P 24/5061	28/12/2016	27/12/2020	GPM 100%
Bardoc Extended	P 24/4832	23/01/2015	22/01/2019	GPM 100%

Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
Bardoc Extended	P 24/4833	23/01/2015	22/01/2019	GPM 100%
Bardoc Extended	P 24/4840	30/01/2015	29/01/2019	GPM 100%
Bardoc FE	M 24/950	04/11/2014	03/11/2035	GPM 100%
Bardoc FE	P 24/4447	31/03/2011	30/03/2019	GPM 100%
Bardoc FE	P 24/5252	Pending		GPM 100%
Bardoc FE	P 24/5253	Pending		GPM 100%
Bardoc FE	P 24/5254	Pending		GPM 100%
Grafters	M 24/956	31/05/2016	30/05/2037	GPM 100%
Grafters	P 24/4887	10/06/2015	09/06/2019	GPM 100%
Scotia South	P 24/4857	29/04/2015	28/04/2019	GPM 100%
Scotia South	P 24/4858	30/04/2015	29/04/2019	GPM 100%
Scotia South	P 24/4859	30/04/2015	29/04/2019	GPM 100%
Scotia South	P 24/4860	30/04/2015	29/04/2019	GPM 100%
Scotia South	P 24/4861	30/04/2015	29/04/2019	GPM 100%
Scotia South	P 24/4886	10/06/2015	09/06/2019	GPM 100%
Vettersburg	M 24/400	09/12/1992	08/12/2034	GPM 100%
Vettersburg	M 24/429	15/02/1995	14/02/2037	GPM 100%
Bardoc Extended	P 24/5109	23/02/2017	22/02/2021	GPM 100%
Wendy Gully West	P 24/4821	15/12/2014	14/12/2018	GPM 100%

Project Name and Location		Tenement Number	Date of Grant	Date of Expiry	Ownership
Wendy West	Gully	P 24/4822	15/12/2014	14/12/2018	GPM 100%
Wendy West	Gully	P 24/4823	15/12/2014	14/12/2018	GPM 100%
Wendy West	Gully	P 24/4824	15/12/2014	14/12/2018	GPM 100%
Wendy West	Gully	P 24/4825	15/12/2014	14/12/2018	GPM 100%
Wendy West	Gully	P 24/4826	15/12/2014	14/12/2018	GPM 100%
Wendy West	Gully	P 24/5261	Pending		GPM 100%
Wendy West	Gully	P 24/5262	Pending		GPM 100%
Wendy West	Gully	P 24/5263	Pending		GPM 100%
Wendy West	Gully	P 24/5264	Pending		GPM 100%
Windanya		P 24/4626	04/10/2012	03/10/2020	GPM 100%
Windanya		P 24/4627	04/10/2012	03/10/2020	GPM 100%
Windanya		P 24/4628	04/10/2012	03/10/2020	GPM 100%

SCHEDULE 11 – SPI MATERIAL PERMITS

Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
Alice River Gold Project (QLD)	ML 2901	29/04/82	30/04/24	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 2902	29/04/82	30/04/24	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 2907	03/06/82	30/06/24	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 2908	03/06/82	30/06/24	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 2957	07/03/85	31/03/27	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 2958	10/04/86	30/04/07 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 3010	25/01/90	31/01/11 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 3011	01/10/87	31/10/08 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	ML 20523	N/A	N/A	Application
Alice River Gold Project (QLD)	EPM 14313	13/07/05	21/07/2015 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	EPM 15359	24/05/07	12/07/2014 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	EPM 15360	23/08/07	7/08/2015 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	EPM 15409	24/05/07	22/08/2015 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project (QLD)	EPM 16301	14/10/08	13/10/16 Renewal Lodged	0% (Right to earn up to a 100% interest)
Alice River Gold Project	EPM 26266	08/05/17	07/05/22	0% (Right to earn up to a 100%

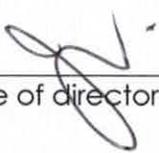
Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
(QLD)				interest)
Mulwarrie Gold Project (WA)	M30/119	13/08/07	12/08/28	51% Beneficial Interest Earnt. Agreement for 49% purchase – Refer ASX Release dated 25/5/18. Royalty agreement Reif and Hoppmann – 2.5% net smelter return on the first 50,000 ounces from M30/119 and M30/145 (Combined)
Mulwarrie Gold Project (WA)	M30/145	12/01/07	11/01/2028	51% Beneficial Interest Earnt. Agreement for 49% purchase – Refer ASX Release dated 25/5/18. Royalty agreement Reif and Hoppmann – 2.5% net smelter return on the first 50,000 ounces from M30/119 and M30/145 (Combined)
England Gold Project (WA)	E38/2869	26/11/2014	25/11/2019	100%
Yoda Gold Project (NT)	EL 30834	11/12/2015	10/12/2021	100%
South Woodie Woodie Project (WA)	E46/616	3/8/2005	2/8/2018 (Application for extension lodged)	80% (Royalty Agreement with Churchill Mining Plc)
South Woodie Woodie Project (WA)	E46/787	22/7/2009	21/7/2019	100%

Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
South Woodie Woodie Project (WA)	E46/835	25/3/2011	24/3/2021	100%
South Woodie Woodie Project (WA)	R46/002	4/7/2017	3/7/2022	80% (Royalty Agreement with Churchill Mining Plc)
South Woodie Woodie Project (WA)	E46/1159	23/3/2017	6/3/2023	100%
South Woodie Woodie Project (WA)	E46/1160	23/3/2017	15/11/2022	100%
Aphrodite Gold Project (WA)	M24/720	21/08/2007	20/08/2028	100%
Aphrodite Gold Project (WA)	M24/779	21/08/2007	20/08/2028	100%
Aphrodite Gold Project (WA)	M24/649	10/08/2009	09/08/2030	100%
Aphrodite Gold Project (WA)	M24/681	10/08/2009	09/08/2030	100%
Aphrodite Gold Project (WA)	M24/662	28/06/2007	27/06/2028	100%
Aphrodite Gold Project (WA)	E24/186	14/02/2014	13/02/2019	100%
Aphrodite Gold Project (WA)	P24/5014	07/07/2016	06/07/2020	100%
Aphrodite Gold Project (WA)	P24/5015	07/07/2016	06/06/2020	100%
Aphrodite Gold Project (WA)	L24/204	15/04/2014	14/04/2035	100%
Aphrodite Gold Project (WA)	L29/114	17/04/2014	16/04/2035	100%

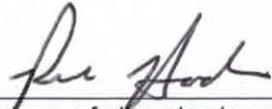
Project Name and Location	Tenement Number	Date of Grant	Date of Expiry	Ownership
Aphrodite Gold Project (WA)	L29/115	15/04/2014	14/04/2035	100%
Aphrodite Gold Project (WA)	L24/225	Pending	Pending	100%
Aphrodite Gold Project (WA)	L24/226	Pending	Pending	100%
Aphrodite Gold Project (WA)	L24/227	Pending	Pending	100%

EXECUTED as an Agreement.

EXECUTED by
SPITFIRE MATERIALS LIMITED
ACN 125 578 743)
in accordance with section 127 of)
the *Corporations Act 2001* (Cth):)
)



Signature of director



Signature of ~~director~~/company
secretary*

JOHN YOUNG.

Name of director

RUSSELL HARDWICK

Name of ~~director~~/company
secretary*

*please delete as applicable

EXECUTED by)
EXCELSIOR GOLD LIMITED)
ACN 123 629 863)
in accordance with section 127 of)
the *Corporations Act 2001* (Cth):)



Signature of director



Signature of ~~director~~/company
secretary*

Rowan Johnston

Name of director

AMANDA SPARKS.

Name of ~~director~~/company
secretary*

*please delete as applicable

ANNEXURE A – ANNOUNCEMENT (CLAUSE 14.1)

ANNEXURE B – SCHEME OF ARRANGEMENT AND DEED POLL

**EXCELSIOR GOLD LIMITED
ACN 123 629 863
(EXG)**

and

EACH SCHEME PARTICIPANT

**SCHEME OF ARRANGEMENT PURSUANT TO SECTION 411 OF
THE CORPORATIONS ACT**

BETWEEN

EXCELSIOR GOLD LIMITED (ACN 123 629 863) of Unit 2, 124 Stirling Highway, North Fremantle WA 6159;

AND

EACH SCHEME PARTICIPANT.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market operated by it known as the "Australian Securities Exchange".

ASX Operating Rules means the operating rules of ASX Settlement.

ASX Settlement means ASX Settlement Pty Ltd (ACN 008 504 532).

Business Day means a day as defined in the Listing Rules other than any day which banks are not open for general banking business in Perth, Western Australia.

CHES means the Clearing House Electronic Sub-register System, for the electronic transfer of securities, operated by ASX Settlement.

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

Court means the Federal Court of Australia, or such other court of competent jurisdiction as agreed in writing by the parties.

Duty means a tax on a dutiable transaction under the *Duties Act 2008* (WA) or a similar tax imposed in another jurisdiction, including a jurisdiction outside Australia.

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Scheme.

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

End Date means the date that is six (6) months after date of the Merger Implementation Agreement.

EXG means Excelsior Gold Limited (ACN 123 629 863).

EXG Option means an option to acquire an EXG Share.

EXG Performance Right means a right to acquire an EXG Share.

EXG Share means a fully paid ordinary share in the capital of EXG.

Implementation Date means the fifth Business Day immediately following the Record Date, or such other date after the Record Date agreed by the parties in writing.

Ineligible Foreign Holder means a Scheme Participant whose address in the Register is in a jurisdiction outside Australia, except where SPI and EXG are reasonably satisfied that the issue of New SPI Shares in that jurisdiction under the Scheme would be neither prohibited by law nor unduly onerous.

Listing Rule means a listing rule of ASX.

Merger Implementation Agreement means the merger implementation agreement between EXG and SPI dated _____ 2018.

New SPI Shares means those SPI Shares to be issued to Scheme Participants in consideration for their Scheme Shares under the terms of this Scheme.

Record Date means 5.00pm on the day which is three (3) Business Days after the Effective Date, or such other date agreed by the parties in writing.

Register or **EXG Register** means the register of EXG members maintained by Computershare Limited and **Share Registry** has a corresponding meaning.

Registered Address means, in relation to a Scheme Participant, the address of the Scheme Participant shown in the Register.

Sale Agent means the person approved by EXG, SPI and (if necessary) ASIC to sell the New SPI Shares that are attributable to Ineligible Foreign Holders and Small Shareholders under the terms of this Scheme (or any nominee of such person).

Scheme or **Share Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act recorded in this document subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act.

Scheme Consideration means the consideration to be provided by SPI to Scheme Participants for the transfer of their Scheme Shares under the terms of the Scheme, being 1 New SPI Share for every 2.208 Scheme Shares held as at the Record Date.

Scheme Deed Poll or **Deed Poll** means the deed poll executed by SPI on or about _____ in favour of each Scheme Participant as set out in Annexure A of this Scheme.

Scheme Meeting means the meeting of Shareholders, to be convened by the Court pursuant to section 411(1) of the Corporations Act, to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Participant means each person who is registered in the Register as a holder of Scheme Shares as at the Record Date.

Scheme Shares means the EXG Shares on issue as at the Record Date.

Second Court Date means the first day of the Second Court Hearing, or if the application at such hearing is adjourned or subject to an appeal for any reason, the first day on which the adjourned or appealed application is heard.

Second Court Hearing means the hearing of the Court of the application for an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme.

Shareholder or **EXG Shareholder** means a holder of an EXG Share.

Small Shareholder means a Scheme Participant who is entitled to receive 5,000 or less New SPI Shares (or such other number as may be agreed between SPI and EXG in writing) as at 5.00pm on the Record Date.

SPI means Spitfire Materials Limited (ACN 125 578 743).

SPI Option means an option to acquire an SPI Share.

SPI Performance Right means a right to acquire an SPI Share.

SPI Register means the register of members of SPI maintained by Computershare Limited and **SPI Registry** has a corresponding meaning.

SPI Share means a fully paid ordinary share in the capital of SPI.

Subsidiary of an entity means another entity which is a subsidiary of the first within the meaning of Division 6 of Part 1.2 of the Corporations Act or is a subsidiary or otherwise controlled by the first within the meaning of any approved accounting standard.

1.2 Interpretation

In this Scheme:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the word "includes" in any form is not a word of limitation;

and unless the context indicates otherwise:

- (c) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to:
 - (i) a clause or schedule is a reference to a clause or schedule of this Scheme;
 - (ii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
 - (iii) a document in writing includes a document produced by means of typewriting, printing, lithography, photography and

other modes of representing or reproducing words in a visible form, recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;

- (iv) a document (including this Scheme) includes a reference to all schedules, exhibits, attachments and annexures to it, and is to that document as varied, novated, ratified or replaced from time to time;
- (v) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued or delegated legislation made under it;
- (vi) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (f) a reference to a day is to a period of time commencing at midnight and ending twenty-four (24) hours later;
- (g) a reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act;
- (h) a reference to "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programmes, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (i) the words "entity" and "officer" have the same meaning as in section 9 of the Corporations Act, and "control" has the same meaning as in section 50AA of the Corporations Act;
- (j) time is a reference to time in Perth, Western Australia;
- (k) a reference to "\$" or "dollar" is to Australian currency;
- (l) a contravention of or a breach of any of the representations and warranties includes any of the representations and warranties not being complete, true and correct;
- (m) each representation and warranty is a separate representation and warranty, and its meaning is not affected by any other representation or warranty;
- (n) a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (o) when a day on or by which anything to be done is not a Business Day, that thing may be done on or by the next Business Day.

2. PRELIMINARY

2.1 EXG

- (a) EXG is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of this document:
 - (i) 835,617,242 EXG Shares are on issue;
 - (ii) 14,000,000 EXG Options are on issue; and
 - (iii) 9,829,268 EXG Performance Rights are on issue.
- (c) EXG has been admitted to the official list of ASX and its shares have been granted official quotation.

2.2 SPI

- (a) SPI is a public company limited by shares, incorporated in Australia and registered in Western Australia.
- (b) As at the date of this document:
 - (i) 521,068,820 SPI Shares are on issue;
 - (ii) 43,362,635 SPI Options are on issue; and
 - (iii) 24,300,000 SPI Performance Rights are on issue.
- (c) SPI has been admitted to the official list of ASX and its shares have been granted official quotation.

2.3 Scheme summary

If this Scheme becomes Effective, then:

- (a) in consideration for the transfer of each Scheme Share to SPI, SPI will be obliged to provide the Scheme Consideration to each Scheme Participant (other than Ineligible Foreign Holders who will be dealt with in accordance with clause 4.9 and those Small Shareholders who elect to receive cash proceeds instead of New SPI Shares in accordance with clause 4.10);
- (b) each Scheme Participant will be bound to transfer their Scheme Shares, and all rights and obligations attaching to them as at the Implementation Date, to SPI;
- (c) EXG will enter SPI's name and registered address in the Register as the holder of all Scheme Shares; and
- (d) on the transfer of all Scheme Shares to SPI, EXG will become a wholly owned Subsidiary of SPI.

2.4 Implementation

- (a) SPI has entered into the Scheme Deed Poll pursuant to which it has, among other things, covenanted to carry out its obligations (including its obligation to provide the Scheme Consideration, subject to clauses 4.9 and 4.10 of this Scheme, to Scheme Participants) as contemplated by this Scheme.
- (b) EXG and SPI have also entered into the Merger Implementation Agreement, which sets out the terms on which EXG and SPI have agreed to implement the Scheme.

3. CONDITIONS PRECEDENT AND EFFECTIVENESS

3.1 Conditions precedent

The conditions precedent to this Scheme becoming Effective are:

- (a) **(Conditions precedent to Merger Implementation Agreement)** all of the conditions set out in Schedule 3 of the Merger Implementation Agreement (other than those set out in items 3 and 4 of Schedule 3 of the Merger Implementation Agreement) being satisfied or waived in accordance with the terms of the Merger Implementation Agreement by the times indicated in the Merger Implementation Agreement;
- (b) **(No termination)** the Merger Implementation Agreement or Scheme Deed Poll not being terminated prior to 8.00am on the Second Court Date;
- (c) **(Court approval)** the Court having approved the Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, EXG and SPI having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act and any such conditions having been satisfied or waived; and
- (d) **(Court orders effective)** the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme.

The satisfaction of each of the conditions precedent in this clause 3.1 is a condition precedent to the operation of this Scheme and this Scheme will be of no effect unless the conditions precedent in this clause 3.1 are satisfied.

3.2 Certificate

- (a) SPI and EXG will provide to the Court at the Second Court Hearing a certificate confirming whether or not all of the conditions in Schedule 3 of the Merger Implementation Agreement (other than those set out in items 3 and 4 of Schedule 3 of the Merger Implementation Agreement) have been satisfied or waived in accordance with the terms of the Merger Implementation Agreement.
- (b) The giving of a certificate by each of SPI and EXG in accordance with clause 3.2(a) will, in the absence of manifest error, be conclusive evidence of the matters referred to in the certificate.

3.3 Merger Implementation Agreement

If the Merger Implementation Agreement is terminated in accordance with its terms prior to 8.00am on the Second Court Date, SPI and EXG are each immediately released from:

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

provided that SPI and EXG will retain the rights they have against each other in respect of any prior breach of the Merger Implementation Agreement in accordance with the terms of that agreement.

3.4 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

4. IMPLEMENTATION OF THE SCHEME

4.1 Court order

This Scheme will become binding on EXG and each Scheme Participant if and only if the Court makes an order under section 411(4)(b) of the Corporations Act approving this Scheme and that order becomes effective under section 411(10) of the Corporations Act.

4.2 Lodgement with ASIC

EXG will lodge with ASIC an office copy of the order of the Court made under section 411(4)(b) of the Corporations Act approving this Scheme as soon as practicable and, in any event, by 5.00pm on the first Business Day after:

- (a) the Court approves the Scheme; or
- (b) the date of satisfaction of the conditions precedent referred to in clause 3.1 of this Scheme, whichever is the later.

4.3 Transfer of Scheme Shares

Subject to clause 4.4, all of the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares) will be transferred to SPI on the Implementation Date (without the need for any further act by a Scheme Participant other than acts performed by EXG pursuant to the authority in clause 4.10) by EXG effecting a valid transfer or transfers under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) EXG executing and delivering to SPI, pursuant to the authority in clause 4.10, a valid share transfer form or forms (which may be a master transfer) to transfer all of the Scheme Shares to SPI;
- (b) SPI executing and delivering that share transfer form or those forms to EXG; and
- (c) EXG, immediately upon receipt of the executed share transfer form or forms, entering the name and address of SPI in the Register as the holder of all Scheme Shares.

4.4 Consideration under this Scheme

Subject to and in accordance with the other terms and conditions of this Scheme (including clauses 4.6, 4.7, 4.9 and 4.10) and the Scheme Deed Poll, in consideration for the transfer of each Scheme Share to SPI, SPI will, on the Implementation Date, issue to each Scheme Participant the number of New SPI Shares as are due to that Scheme Participant as Scheme Consideration.

4.5 Joint holders

In the case of Scheme Shares held in joint names, any certificates or uncertificated holding statements for New SPI Shares to be issued to Scheme Participants will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the Register on the Record Date.

4.6 Fractional entitlements

Where the calculation of the total number of New SPI Shares to be issued to (or in respect of) a particular Scheme Participant would result in a fractional entitlement to a New SPI Share, then, any such fractional entitlement will be rounded up to the nearest whole number.

4.7 Shareholding splitting or division

If SPI is of the reasonable opinion that two or more Scheme Participants (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.6 or each of whom holds less than or equal to the number of Scheme Shares required to classify as a Small Shareholder) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, SPI may give notice to those Scheme Participants:

- (a) setting out their names and Registered Addresses;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Participant specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Participants whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. SPI, in complying with the other provisions of this Scheme relating to it in respect of the Scheme Participant specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Participants named in the notice under the terms of this Scheme.

4.8 Scheme Participants bound

Each Scheme Participant who is to receive New SPI Shares under this Scheme agrees (for all purposes including section 231 of the Corporations Act) to:

- (a) become a member of SPI and to accept the New SPI Shares issued to them under this Scheme subject to, and to be bound by, SPI's constitution and other constituent documents; and
- (b) have their name and address entered into the SPI Register.

4.9 Ineligible Foreign Holders

- (a) SPI will be under no obligation under this Scheme to issue, and will not issue, any New SPI Shares to Ineligible Foreign Holders, and instead:

- (i) all the New SPI Shares which would otherwise be required to be issued to any Ineligible Foreign Holder under the Scheme, if they were eligible to receive them, will be issued to the Sale Agent;
- (ii) SPI will procure that, as soon as reasonably practicable (and in any event not more than fifteen (15) Business Days after the Implementation Date), the Sale Agent sells on ASX all of the New SPI Shares issued to the Sale Agent pursuant to clause 4.9(a)(i) in such manner, at such price and on such other terms as the Sale Agent determines in good faith (and at the risk of the Ineligible Foreign Holders), and remits to SPI the proceeds of sale (after deducting any applicable brokerage and other selling costs, taxes and charges) (**Proceeds**); and
- (iii) SPI will pay to each Ineligible Foreign Holder such fraction of the Proceeds as is equal to the number of New SPI Shares which would have been issued to that Ineligible Foreign Holder (if they were eligible to receive New SPI Shares) divided by the total number of New SPI Shares issued to the Sale Agent under clause 4.9(a)(i), promptly after the last sale of New SPI Shares by the Sale Agent,

in full satisfaction of SPI's obligations to those Ineligible Foreign Holders under the Scheme in respect of the Scheme Consideration.

- (b) SPI will pay the relevant fraction of the Proceeds to each Ineligible Foreign Holder by either:

- (i) dispatching, or procuring the dispatch, to that Ineligible Foreign Holder by prepaid post to that Ineligible Foreign Holder's Registered Address (at the Record Date), a cheque in the name of that Ineligible Foreign Holder; or
- (ii) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by that Ineligible Foreign Holder to EXG (or the Share Registry) and recorded in or for the purposes of the Register at the Record Date,

for the relevant amount, with that amount being denominated in Australian dollars.

- (c) Each Ineligible Foreign Holder appoints EXG as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Holders under the Corporations Act.

4.10 Small Shareholders

Each Small Shareholder may elect to either:

- (a) be issued its entitlement to SPI Shares in accordance with clause 4.4; or
- (b) have the New SPI Shares to which it is entitled issued to the Sale Agent, in which case:
 - (i) SPI will procure that, as soon as reasonably practicable (and in any event not more than fifteen (15) Business Days after the Implementation Date), the Sale Agent sells on ASX all of the New SPI Shares issued to the Sale Agent pursuant to this clause 4.10(b) in such manner, at such price and on such other terms as the Sale Agent determines in good faith (and at the risk of the Small Shareholder), and remits to SPI the proceeds of sale (after deducting any applicable brokerage and other selling costs, taxes and charges) (**Proceeds**);
 - (ii) SPI will pay to each Small Shareholder such fraction of the Proceeds as is equal to the number of New SPI Shares which would have been issued to that Small Shareholder divided by the total number of New SPI Shares issued to the Sale Agent under clause 4.10(b)(i), promptly after the last sale of New SPI Shares by the Sale Agent, in full satisfaction of SPI's obligations to those Small Shareholders under the Scheme in respect of the Scheme Consideration;
 - (iii) SPI will pay the relevant fraction of the Proceeds to each Small Shareholder by either:
 - (A) dispatching, or procuring the dispatch, to that Small Shareholder by prepaid post to that Small Shareholder's Registered Address (at the Record Date), a cheque in the name of that Small Shareholder; or
 - (B) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by that Small Shareholder to EXG (or the Share Registry) and recorded in or for the purposes of the Register at the Record Date,for the relevant amount, with that amount being denominated in Australian dollars; and
- (c) for the purposes of clause 4.10(b), each Small Shareholder appoints EXG as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Small Shareholders under the Corporations Act.

4.11 Authority given to EXG

Each Scheme Participant will be deemed (without the need for any further act) to have irrevocably authorised EXG (and each of its directors and officers, jointly and severally) as agent and attorney to do and execute all acts, matters, things and documents on the part of each Scheme Participant necessary to implement and give full effect to this Scheme and the transactions contemplated by it, including (without limitation):

- (a) executing a proper instrument of transfer (including for the purposes of section 1071B of the Corporations Act) of their Scheme Shares in favour of SPI, which may be a master transfer of some or all Scheme Shares; and
- (b) where Scheme Shares are held in a CHESS holding, causing a message to be transmitted to ASX Settlement in accordance with the ASX Operating Rules to transfer the Scheme Shares held by the Scheme Participant from the CHESS sub-register to the issuer sponsored sub-register operated by EXG and subsequently completing a proper instrument of transfer under paragraph (a) above.

4.12 Appointment of sole proxy

Upon the Scheme Consideration being issued by SPI pursuant to this clause 4 and until EXG registers SPI as the holder of all Scheme Shares in the Register, each Scheme Participant:

- (a) is deemed to have appointed SPI as attorney and agent (and directed SPI in such capacity) to appoint the chairman of SPI as its sole proxy and, where applicable, corporate representative, to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 4.12(a)); and
- (b) must take all other actions in the capacity of a registered holder of Scheme Shares as SPI reasonably directs.

5. SPI'S OBLIGATIONS AND ANCILLARY MATTERS

5.1 EXG notice and Scheme Participant consent

- (a) As soon as practicable after the Record Date, and in any event at least two (2) Business Days before the Implementation Date, EXG will give to SPI (or procure that SPI be given) details of the names and addresses shown in the Register of all Scheme Participants and the number of Scheme Shares held by each of them at the Record Date (in such form as may be reasonably requested by SPI).
- (b) Scheme Participants agree that any information referred to in clause 5.1(a) may be disclosed to SPI, SPI's advisors, EXG's advisors and other service providers (including the SPI Registry) to the extent necessary to effect the Scheme.

5.2 Provision of Scheme Consideration

Subject to clauses 4.6, 4.7 and 4.9, SPI will provide to each Scheme Participant the Scheme Consideration to which that Scheme Participant is entitled by:

- (a) on the Implementation Date, issuing to that Scheme Participant 1 New SPI Share for every 2.208 Scheme Shares registered in the name of that Scheme Participant in the Register at the Record Date, which obligation will be satisfied by causing the name and Registered Address (at the Record Date) of that Scheme Participant to be entered into the SPI

Register as the holder of the New SPI Shares issued to that Scheme Participant; and

- (b) within five (5) Business Days after the Implementation Date, procuring the dispatch to that Scheme Participant of a certificate or uncertificated holding statement in the name of that Scheme Participant relating to the number of New SPI Shares issued to that Scheme Participant.

5.3 Status of New SPI Shares

The New SPI Shares to be issued in accordance with this Scheme will:

- (a) be validly issued;
- (b) be fully paid;
- (c) be free from any mortgage, charge, lien, encumbrance or other security interest; and
- (d) rank equally in all respects with all other SPI Shares then on issue (other than in respect of any dividend already declared and not yet paid by SPI, where the record date for entitlement to that dividend occurred prior to the Implementation Date).

5.4 Deferred settlement trading

SPI will use its reasonable endeavours to ensure that the New SPI Shares are quoted on ASX initially on a deferred settlement basis on and from the Business Day after the Effective Date, and on an ordinary settlement basis on and from the Business Day following the Implementation Date.

5.5 Appointment of SPI as attorney and agent

Each Scheme Participant, without need for any further act, irrevocably appoints SPI and each of its directors and officers, jointly and severally, as that Scheme Participant's attorney and agent for the purpose of executing any form of application required for New SPI Shares to be issued to that Scheme Participant under the Scheme.

6. DEALINGS IN EXG SHARES

6.1 No issue

No EXG Shares will be issued by EXG after the Effective Date and before the Implementation Date.

6.2 No dealings after Record Date

Where this Scheme becomes binding as provided by clause 4.1, for the purposes of determining who are Scheme Participants, dealings in EXG Shares will only be recognised if:

- (a) in the case of dealings of a type to be effected using CHES, the transferee is registered in the Register as the holder of the EXG Shares at the Record Date; and

- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Share Registry at or before the Record Date.

EXG will register registrable transfers or transmission applications of the kind referred to in clause 6.2(b) on or before the Record Date.

6.3 No registration of transfers

EXG will not accept for registration nor recognise for any purpose any transmission application, transfer or other dealing in respect of Scheme Shares received after the Record Date, other than a transfer to SPI in accordance with this Scheme.

6.4 Statements of holding

All statements of holdings (or certificates) for Scheme Shares will cease to have any effect from the Record Date as documents of title in respect of such Scheme Shares. As from the Record Date, each entry current at that date on the Register relating to Scheme Shares will cease to be of any effect other than as evidence of entitlement to the Scheme Consideration.

6.5 Maintenance of Register

In order to determine entitlements to the Scheme Consideration, EXG will maintain, or procure the maintenance of, the Register in accordance with this clause 6 until the Scheme Consideration has been provided to Scheme Participants, and the Register in this form will solely determine entitlements to the Scheme Consideration.

7. QUOTATION OF EXG SHARES

7.1 Suspension of trading

EXG will apply to ASX for suspension of trading of EXG Shares on ASX after the close of trading on ASX on the Effective Date. It is expected that suspension of trading in EXG Shares will occur from the commencement of the Business Day following the day on which EXG notifies ASX of this Scheme becoming Effective.

7.2 Termination of quotation

After the Implementation Date, EXG will apply for termination of the official quotation of EXG Shares and to have itself removed from the official list of ASX.

8. GENERAL

8.1 Scheme binding

Each Scheme Participant will transfer their Scheme Shares to SPI (together with all rights and entitlements attaching to those Scheme Shares) in accordance with the terms of this Scheme and this Scheme binds EXG and all Scheme Participants (including those who do not attend the Scheme Meeting, do not vote at the Scheme Meeting, or vote against this Scheme at the Scheme Meeting).

8.2 Enforcement of Scheme Deed Poll

- (a) Each Scheme Participant appoints EXG as its agent and attorney to enforce the Scheme Deed Poll against SPI.
- (b) EXG undertakes in favour of each Scheme Participant to enforce the Scheme Deed Poll against SPI on behalf of, and as agent and attorney for, the Scheme Participants.

8.3 Modifications and amendments

EXG may by its counsel or solicitors (but only with the prior consent of SPI, which consent may not be unreasonably withheld or delayed) consent on behalf of all persons concerned (including the Scheme Participants) to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of this Scheme.

8.4 Accidental omissions and non-receipt of notice

The accidental omission to give notice of the Scheme Meeting to any holder of EXG Shares or the non-receipt of such a notice by any holder of EXG Shares will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings at the Scheme Meeting.

8.5 Status of Scheme Shares

- (a) Each Scheme Participant is deemed to have warranted to EXG, in its own right and for the benefit of SPI, that all of their Scheme Shares which are transferred to SPI under the Scheme will, at the date of transfer of them to SPI, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares to SPI.
- (b) SPI will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by EXG of the name and registered address of SPI in the Register as the holder of the Scheme Shares.

8.6 Binding instruction or notification

Except for a Scheme Participant's tax file number, any binding instruction or notification from a Scheme Participant to EXG relating to Scheme Shares at the Record Date (including any instructions relating to the payment of dividends or communications) will, from the Record Date, be deemed (except to the extent inconsistent with the other provisions of this Scheme or as determined otherwise by SPI in its sole discretion) to be a similarly binding instruction or notification to SPI in respect of the New SPI Shares issued to the Scheme Participant until such time as it is revoked or amended in writing addressed to SPI at the SPI Registry.

8.7 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post:

- (a) to EXG, it will not be deemed to be received in the ordinary course of post or on a day other than the date (if any) on which it was actually received at EXG's registered office or the Share Registry; and

- (b) to a Scheme Participant, it will be sent by ordinary pre-paid post (or by airmail in the case of Scheme Participants with overseas Registered Addresses) or courier to the Registered Address of the relevant Scheme Participant at the Record Date, or delivered to that address by any other means at no cost to the recipient.

8.8 Further obligations

EXG and SPI must each execute all deeds and other documents (including transfers) and do all acts and things as may be necessary or expedient on its part to implement and give full effect to this Scheme in accordance with its terms.

8.9 No liability

Neither EXG nor SPI, nor any of their respective officers, is liable to Scheme Participants for anything done or for anything omitted to be done in performance of this Scheme in good faith.

8.10 Costs and Duty

EXG will pay the costs of the Scheme other than Duty. All Duty (if any) payable and any related fines, interest and penalties in connection with the transfer of the Scheme Shares to SPI will be payable by SPI.

8.11 Governing law

The Scheme is governed by the laws of Western Australia. EXG, Scheme Participants and SPI each submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waive any right they might have to claim that those courts are an inconvenient forum.

ANNEXURE A – SCHEME DEED POLL

SPITFIRE MATERIALS LIMITED
ACN 125 578 743
(SPI)

SCHEME DEED POLL

THIS AGREEMENT is made on the

day of

2018

BETWEEN

SPITFIRE MATERIALS LIMITED (ACN 125 578 743) of 130 Stirling Highway, North Fremantle WA 6159 (**SPI**);

AND

In favour of each holder of fully paid ordinary shares in the capital of Excelsior Gold Limited (ACN 123 629 863) (**EXG**) on issue as at 5.00pm on the Record Date (each a **Scheme Participant**).

RECITALS

- A. SPI and EXG have entered into the Merger Implementation Agreement.
- B. EXG has agreed in the Merger Implementation Agreement to propose the Share Scheme.
- C. Under the Share Scheme, all EXG Shares held by Scheme Participants will be transferred to SPI for the Scheme Consideration.
- D. In accordance with the Merger Implementation Agreement, SPI is entering into this Deed to covenant in favour of the Scheme Participants to perform its obligations under the Share Scheme.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Deed means this Scheme Deed Poll.

Merger Implementation Agreement means the merger implementation agreement between EXG and SPI dated 24th June 2018.

Scheme or **Share Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between EXG and the Scheme Participants, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by EXG and SPI.

Terms that are not defined in this Deed and that are defined in the Merger Implementation Agreement or the Scheme have the same meaning in this Deed as given to the term in the Merger Implementation Agreement, unless the context makes it clear that a definition is not intended to apply.

1.2 Interpretation

The rules specified in clause 1.2 of the Merger Implementation Agreement apply in interpreting this Deed, unless the context makes it clear that a rule is not intended to apply.

1.3 Nature of Deed Poll

SPI acknowledges that:

- (a) this Deed may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints EXG and any of EXG's directors as its agent and attorney, inter alia, to enforce this Deed against SPI.

2. CONDITION PRECEDENT AND TERMINATION

2.1 Condition

SPI's obligations under clause 3 are subject to the Share Scheme becoming Effective.

2.2 Termination

If the Share Scheme does not become Effective on or before the End Date, or the Merger Implementation Agreement is terminated in accordance with its terms, SPI's obligations under this Deed will automatically terminate and the terms of this Deed will be of no further force or effect, unless SPI and EXG otherwise agree in writing in accordance with the Merger Implementation Agreement.

2.3 Consequences of termination

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

- (a) SPI is released from its obligations to further perform this Deed except those obligations contained in clause 9.3; and
- (b) each Scheme Participant retains any rights, power or remedies it has against SPI in respect of any breach of this Deed by SPI which occurred before termination of this Deed.

3. PAYMENT OF SCHEME CONSIDERATION

3.1 Performance of obligations generally

SPI must comply with its obligations under the Merger Implementation Agreement and do all things necessary or desirable on its part to implement the Scheme.

3.2 Undertaking to pay Scheme Consideration

Subject to clauses 2, 3.4 and 3.5, in consideration of the transfer of each EXG Share to SPI, SPI must on or as soon as practicable after the Implementation Date:

- (a) acquire all EXG Shares on issue at the Record Date from Scheme Participants, in accordance with the provisions of the Share Scheme;

- (b) issue and allot the Scheme Consideration to each Scheme Participant (other than to Ineligible Foreign Holders who will be dealt with in accordance with clause 3.4 and those Small Shareholders who elect to receive cash proceeds instead of New SPI Shares in accordance with clause 3.5); and
- (c) otherwise do all things necessary or expedient on its part to implement the Share Scheme.

3.3 Satisfaction of obligation to provide Scheme Consideration

The obligation of SPI to provide the Scheme Consideration referred to in clause 3.2(b) will be satisfied by SPI:

- (a) on the Implementation Date, passing a resolution of directors and doing all other things necessary to validly issue the New SPI Shares comprising the Scheme Consideration due to that Scheme Participant (other than an Ineligible Foreign Holder and Small Shareholders who elect to receive cash proceeds instead of New SPI Shares) and entering in the register of members of SPI the name and registered address of each Scheme Participant, in relation to all the New SPI Shares issued to each Scheme Participant as Scheme Consideration in accordance with the Share Scheme;
- (b) on the Implementation Date, passing a resolution of directors and doing all other things necessary to validly issue to the Sale Agent all the New SPI Shares required to be issued to the Sale Agent under the Scheme rather than to an Ineligible Foreign Holder or a Small Shareholder who elects to receive cash proceeds instead of New SPI Shares, and entering the name and registered address of the Sale Agent in the register of members of SPI as the holder of those New SPI Shares;
- (c) on or as soon as practicable after the Implementation Date (and in any event within five (5) Business Days), dispatching to each Scheme Participant, by pre-paid post to his or her address as recorded in EXG's Register at the Record Date or to the Sale Agent (as the case may be), a certificate or uncertificated holding statement in the name of that Scheme Participant representing the number of New SPI Shares issued to that Scheme Participant;
- (d) on the Implementation Date, if required by EXG, executing a valid share transfer form or forms (which may be a master transfer) as contemplated by clause 4.3 of the Scheme effecting the transfer of the Scheme Shares from the Scheme Participants to SPI and must deliver such executed share transfer form or forms to EXG for registration; and
- (e) procuring, as soon as reasonably practicable (and in any event not more than fifteen (15) Business Days after the Implementation Date) that the Sale Agent sell any New SPI Shares issued to it and remit the proceeds to the relevant Ineligible Foreign Holders and Small Shareholders, in accordance with the Scheme.

3.4 Ineligible Foreign Holders

SPI will be under no obligation under the Scheme to issue, and will not issue, any New SPI Shares to an Ineligible Foreign Holder, and instead where a Scheme Participant is an Ineligible Foreign Holder, the number of New SPI Shares to which the Scheme Participant would otherwise be entitled, will be issued to a nominee

approved by SPI, EXG and (if necessary) ASIC who will sell those New SPI Shares as soon as practicable and in accordance with clause 3.3(e) (at the risk of that Ineligible Foreign Holder) and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to that Ineligible Foreign Holder in full satisfaction of that Ineligible Foreign Holder's rights under the Scheme to Scheme Consideration.

3.5 Small Shareholders

Scheme Participants who are entitled to receive 5,000 or less New SPI Shares (or such other number as may be agreed between SPI and EXG in writing) under the Scheme will be given the option to have those New SPI Shares issued to a nominee approved by SPI, EXG and (if necessary) ASIC who will sell those New SPI Shares as soon as practicable and in accordance with clause 3.3(e) (at the risk of the Scheme Participant) and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to that Scheme Participant in full satisfaction of that Scheme Participant's rights under this Deed to Scheme Consideration.

3.6 Joint holders

In the case of EXG Shares held by Scheme Participants in joint names:

- (a) any entry in the register of members of SPI required to be made must record the names and registered addresses of the joint holders; and
- (b) any certificates or uncertificated holding statement for New SPI Shares must be issued to Scheme Participants in the names of the joint holders and must be forwarded to the holder whose name first appears in EXG's Register at the Record Date.

4. QUOTATION OF NEW SPI SHARES

SPI must use its best endeavours to procure that the New SPI Shares to be issued pursuant to the Share Scheme will be quoted on ASX initially on a deferred settlement basis on and from the Business Day after the Effective Date, and on an ordinary settlement basis on and from the Business Day following the Implementation Date.

5. REPRESENTATIONS AND WARRANTIES

SPI represents and warrants that:

- (a) **(status)** it is a company limited by shares and validly existing;
- (b) **(power)** it has full legal capacity and power to enter into this Deed and to carry out the transactions that this Deed contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed and its carrying out the transactions this Deed contemplates;
- (d) **(Deed effective)** this Deed constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditor's rights generally) subject to any necessary stamping; and

- (e) **(Rank equally)** the New SPI Shares to be issued pursuant to the Scheme will be validly issued, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest and will rank equally in all respects with all other SPI Shares then on issue (other than in respect of any dividend already declared and not yet paid by SPI, where the record date for entitlement to that dividend occurred prior to the Implementation Date).

6. CONTINUING OBLIGATIONS

This Deed is irrevocable and, subject to clause 2, remains in full force and effect until SPI has completely performed its obligations under this Deed or the earlier termination of this Deed under clause 2.

7. NOTICES

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

- (a) must be in writing;
- (b) must be addressed to the address notified by the recipient to the sender from time to time; at the date of this Deed, SPI's address is the address as set out at the start of this Deed;
- (c) must be signed by the sender or (on the sender's behalf) by the solicitor for or any attorney, director, secretary or authorised agent of that sender;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, or sent by email to the email address, of the addressee in accordance with (c); and
- (e) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting;
 - (iii) (in the case of facsimile) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the facsimile machine from which it was sent or other verification from the time of sending;
 - (iv) (in the case of email) at the time that the email reaches the addressee's email address; and
 - (v) (in the case of delivery by hand) on delivery,

but if the communication would, on the application of clauses (i) to (v), be taken to be received on a day that is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

8. AMENDMENT AND ASSIGNMENT

8.1 Amendment

This Deed may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by EXG; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by EXG and is approved by the Court,

and, in which case, SPI will enter into a further deed poll in favour of Scheme Participants giving effect to that amendment.

8.2 Assignment

The rights and obligations of a person under this Deed are personal. They cannot be assigned, novated, encumbered, charged or otherwise dealt with, and no person shall attempt or purport to do so.

9. GENERAL

9.1 Governing law

This Deed is governed by and must be construed according to the law applying in Western Australia.

9.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, and any courts competent to determine appeals from any of those courts, with respect to any proceedings that may be brought at any time relating to or in connection with this Deed; and
- (b) waives any objection that it may now or in the future have to the venue of any proceedings, and any claim that it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.2(a).

9.3 Liability for expenses

SPI is solely responsible for, and must indemnify each Scheme Participant against, and must pay each Scheme Participant on demand the amount of, any duty that is payable and any related fines, interest and penalties in respect of or in connection with this Deed, the performance of this Deed and each transaction effected by or made or any instrument executed under this Deed or the Scheme, including the transfer of Scheme Shares under the Scheme.

9.4 Waiver of rights

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this Deed.

- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

9.5 Consent

SPI consents to EXG producing this Deed to the Court.

9.6 Further acts and documents

SPI must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to EXG) required by law or reasonably requested by EXG to give full effect to this Deed and the transactions contemplated by this Deed.

9.7 Severance and enforceability

Any provision, or the application of any provision, of this Deed that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed in that or any other jurisdiction.

EXECUTED as a Deed.

EXECUTED by)
SPITFIRE MATERIALS LIMITED)
ACN 125 578 743)
 in accordance with section 127 of the)
Corporations Act 2001 (Cth):)

 Signature of director

 Signature of director/company secretary*

 Name of director

 Name of director/company secretary*

*please delete as applicable