



## JOINT ANNOUNCEMENT

11 February 2015

### ORBIS GOLD BOARD UNANIMOUSLY RECOMMENDS INCREASED SEMAFO OFFER REVISED OFFER PRICE OF A\$0.713 BEST AND FINAL<sup>1</sup> ALL DIRECTORS AND MAJOR SHAREHOLDER DGR GLOBAL TO ACCEPT

Orbis Gold Limited ("Orbis Gold") and SEMAFO Inc. ("SEMAFO") have today jointly announced a revised takeover offer for Orbis Gold ("Revised Offer"), under which Orbis Gold shareholders will be offered A\$0.713 cash per Orbis Gold share. All of the Orbis Gold directors, together representing 2.8% of Orbis Gold's shares, have committed to accept the Revised Offer. In addition, shareholders representing in aggregate 62.2% of Orbis Gold (including major shareholder DGR Global Limited ("DGR")) have indicated to Orbis Gold an intention to accept the Revised Offer.<sup>2</sup> The closing date for the Revised Offer is 20 February 2015.

SEMAFO will declare the Revised Offer unconditional as soon as practicable after it has obtained valid acceptances of more than 50.1% of Orbis Gold shares. The Revised Offer is SEMAFO's best and final offer.<sup>1</sup> This means that, subject to no Competing Proposal emerging, SEMAFO will not increase the offer price again.

#### Reasons to Accept

The Orbis Gold Board **unanimously recommends** that Orbis Gold shareholders **ACCEPT** the Revised Offer in the absence of a superior proposal, for the reasons outlined below.

1. The Revised Offer of A\$0.713 per share represents an attractive premium for Orbis Gold shareholders:
  - 104% premium to the closing price on 9 October 2014;
  - 99% premium to the 1 month volume weighted average price ("VWAP") to 9 October 2014; and
  - 91% premium to the 3 month VWAP to 9 October 2014.
2. The Revised Offer is within the fair value range considered by the Independent Expert;
3. SEMAFO will provide funding of A\$17.4 million for the purposes of assisting Orbis Gold with immediate liquidity requirements. This will eliminate the need for Orbis Gold to pursue dilutive capital raising alternatives.

<sup>1</sup> Subject to no Competing Proposal emerging, as defined in the Bid Agreement annexed to this announcement as Annexure B.

<sup>2</sup> Each of the shareholders who has indicated to Orbis Gold that it intends to accept the Revised Offer has consented in writing to Orbis Gold disclosing their intention.

4. The Revised Offer provides all Orbis Gold shareholders with certainty of cash.
5. The Revised Offer is the only offer that is available for your Orbis Gold shares and is SEMAFO's best and final offer.<sup>1</sup>
6. The Orbis Gold share price may fall to levels materially below the Revised Offer price, if SEMAFO's offer fails.

Orbis Gold's Chairman John Bovard said: *"This unanimous recommendation to accept SEMAFO's Revised Offer has been made after careful consideration and the decision to recommend it was not taken lightly, particularly in light of the current volatility in world equity markets."*

SEMAFO's Chief Executive Officer Benoit Desormeaux said: *"We are delighted that the Orbis Gold board is unanimously recommending our Revised Offer, and look forward to working with the Orbis team on an orderly transition."*

### **Orbis Gold Board Unanimous Recommendation**

The Revised Offer follows an extensive process undertaken by Orbis Gold and its advisers to seek an alternative transaction to SEMAFO's offer. That process was commenced following the announcement of SEMAFO's offer on 16 October 2014. Even though SEMAFO's offer has now been open for a significant period of time, no competing proposal has emerged and the Orbis Gold Board does not consider that any superior proposal is now likely to emerge (particularly now that SEMAFO has increased the offer price). SEMAFO's Revised Offer is, therefore, the only proposal currently available to Orbis Gold shareholders.

SEMAFO has entered into commitment deeds with all Orbis Gold Directors, together representing 2.8% of Orbis Gold's shares, under which the Orbis Gold Directors have committed to accept the Revised Offer for all their Orbis Gold shares within 5 days of SEMAFO formally making the Revised Offer.

Orbis Gold has received intention statements from shareholders representing an additional 62.2% of Orbis Gold (including from DGR Global and certain of the shareholders who initially made intention statements in Section 4.5 of its Target's Statement).<sup>2</sup> These shareholders now intend to accept the Revised Offer as soon as practicable after SEMAFO has formally made the Revised Offer. On that basis, the Orbis Gold Board considers it highly likely that the Revised Offer will achieve the minimum 50.1% acceptance condition.

***In consideration of the above factors, the Orbis Gold Board unanimously recommends that Orbis Gold shareholders ACCEPT the Revised Offer of \$A0.713 per share in the absence of a superior proposal.***

### **Funding**

As part of the transaction, SEMAFO has agreed to provide Orbis Gold with funding which totals, together with the amount outstanding under Orbis Gold's existing working capital facility with Macquarie Bank of \$US4.52 million (which SEMAFO will assume as part of the arrangements), up to A\$17.4 million by way of a short term loan facility ("Facility"). Key terms of the Facility are summarised in Annexure A to this announcement.

The provision of the Facility by SEMAFO means that Orbis Gold will not need to raise additional debt or equity in the short term, which would breach the offer conditions. In the absence of the Facility, it is likely that any capital raising by Orbis Gold in the short term would have led to significant dilution for Orbis Gold's shareholders and the potential withdrawal of SEMAFO's bid.

## **Offer Conditions and Timetable**

At this time, SEMAFO's offer remains subject to a number of conditions (as described in Section 9.9 of the Bidder's Statement, dated 1 December 2014), including:

- SEMAFO acquiring a relevant interest in more than 50% of all Orbis Gold shares at the end of the offer period;
- no "prescribed occurrence" or other specific event occurs in relation to Orbis Gold during the condition period;
- all necessary regulatory approvals are received and no action by any public authority which may adversely affect the offer occurs during the condition period;
- no material acquisition, disposal, commitment or other specific transaction is undertaken by Orbis Gold during the condition period;
- the non-existence of certain rights in relation to Orbis Gold's material assets and material agreements;
- there being no material adverse change in relation to Orbis Gold before the end of the Offer Period; and
- there being no material failing in filings by Orbis Gold with ASX or ASIC.

However, SEMAFO has agreed that it will declare the Revised Offer unconditional as soon as it has valid acceptances of more than 50.1% of Orbis Gold Shares, provided that there is no breach of an offer condition at that time.

Orbis Gold has agreed to appoint a minimum of three SEMAFO nominees to the Orbis Gold Board once SEMAFO reaches 50.1% acceptances, at which time the majority of Orbis Gold Directors will resign. SEMAFO has agreed that two of the current Orbis Gold Directors remain on the Orbis Gold Board, should they choose to do so, for a limited period of time.

Orbis Gold shareholders are encouraged to ACCEPT the Revised Offer promptly as the Revised Offer is scheduled to close at 7pm (Sydney Time) on 20 February 2015.

## **Bid Agreement**

Orbis Gold and SEMAFO have entered into a takeover bid implementation agreement. This agreement sets out the terms of the Revised Offer and a number of other customary requirements, including a commitment by Orbis Gold to deal exclusively with SEMAFO in the absence of superior proposal, to terminate all discussions with other parties, to notify SEMAFO of any competing proposals, and to provide SEMAFO the right to match any alternative superior proposal should one be made. The agreement provides for a break fee of approximately 1% of equity value of Orbis Gold payable to SEMAFO on terms typical for a transaction of this nature. A copy of the agreement is set out in Annexure B.

## **Advisers**

Orbis Gold is being advised by Merrill Lynch as financial adviser, HopgoodGanim as legal adviser and Maxit Capital as strategic adviser.

SEMAFO is being advised by Clarus Securities as financial adviser and Ashurst as legal adviser.

**END OF ANNOUNCEMENT**

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**ANNEXURE A – KEY TERMS OF THE A\$17.4 MILLION BRIDGE FACILITY FOR ORBIS GOLD LIMITED**

# TERM SHEET

## A\$17.4 MILLION BRIDGE FACILITY FOR ORBIS GOLD LIMITED

Please note that the terms set out in this term sheet are non-binding and indicative only and do not constitute an offer to finance the Facility.

11 February 2015

SEMAFO Inc.

### PARTIES

<b>Borrower:</b>	Orbis Gold Limited (ACN 120 212 017) (" <b>Orbis</b> " or " <b>Borrower</b> ")
<b>Guarantors:</b>	MET BF Pty Ltd and each other wholly-owned subsidiary of the Borrower, if any (each a " <b>Guarantor</b> ", and together with the Borrower, each an " <b>Obligor</b> ").
<b>Lender:</b>	SEMAFO Inc. (" <b>SEMAFO</b> ")

### BRIDGE FACILITY DETAILS

<b>Facility:</b>	Bridging Term Loan Facility.
<b>Amount:</b>	A\$17.4 million to be drawn in Australian dollars. The facility is able to be drawn down from time to time by 5 business days' notice to the Lender, provided the facility limit is not exceeded. Drawdowns can only be made in accordance with and for the purpose of payments under the Projected Cashflow Schedule (defined below). The amount of the facility that may be drawn will be reduced by the amount required for SEMAFO to acquire the Macquarie Bank Facility (as defined below), plus the amount of any accrued interest owing to Macquarie and by the amount of the fees payable in respect of the Facility.
<b>Interest rate:</b>	10% per annum calculated daily. Interest will capitalise monthly and be payable on the Termination Date.
<b>Termination Date:</b>	30 April 2015.
<b>Purpose:</b>	1. finance the prepayment of the outstanding amounts due under the existing promissory notes issued to Macquarie Bank Limited (the " <b>Macquarie Bank Facility</b> "), to be effected by the purchase of the Macquarie Bank Facility at par;

2. pay existing creditors of Orbis.

Notwithstanding anything else in this terms sheet, the Facility will only be made available for draw down and can only be used by Orbis for the purposes of making payments in accordance with the schedule of cash flows and expenditure agreed by the parties contemporaneously with the execution of this term sheet and included at Schedule 1 ("**Projected Cashflow Schedule**").

**Availability Period:**

Subject to satisfaction of the conditions precedent, the Facility will be available for drawing immediately upon execution the formal Facility Agreement.

**Repayment:**

Notwithstanding any other provision of the Facility Agreement the Facility (including any accrued interest, the fees referred to below and other amounts payable) must be paid or repaid:

1. from the proceeds of any new debt or equity raising or from the proceeds of sale of any material assets; and
2. to the extent not repaid under paragraph 1, in full on or before the Termination Date.

**Prepayment**

There will be no penalty for prepaying all or any part of the Facility at any time. Any prepayment may only be made in full (and not part only), will require 5 business days' notice and must be made together with all interest accrued and other unpaid amounts under the Facility.

**Default Interest**

Interest will accrue on any overdue amount outstanding under the Facility (including accrued interest) at a rate of 2% per annum above the Interest Rate, payable on demand.

**OTHER TERMS**

**Security:**

The Facility will be secured.

The security will comprise first ranking security over all assets of the Borrower.

**Documentation:**

*Facility Agreement:* The facility will be made available under a Facility Agreement in form and substance satisfactory to SEMAFO, prepared by SEMAFO's counsel. The facility agreement will include the guarantee and indemnity from the Guarantors. In addition to those terms set out above and below, the Facility Agreement will contain other usual terms and conditions for a facility of this type including but not limited to: GST, illegality, changes in law, tax gross up, indemnities, set-off and administration.

*Security documents:* The security will be documented by the

existing general security deed in favour of Macquarie (assigned and amended as set out below).

*Assignment and Novation Deed between SEMAFO, Macquarie and the Borrower ("Assignment Deed")*: An assignment and novation deed will be entered into under which:

- (a) SEMAFO purchases the promissory notes from Macquarie at par; and
- (b) Macquarie transfers to SEMAFO all Macquarie's rights under the promissory notes and the general security deed.

This Assignment Deed will be governed by NSW law.

*Amendment Deed between SEMAFO and the Borrower ("Amendment Deed")*: An amendment deed will be entered into under which amendments are made to the promissory notes to extend the repayment date from 31 March 2015 to the Termination Date and change the payee to SEMAFO, and amendments are made to the general security deed to include the Facility Agreement as a "Finance Document", refer to defaults under the Facility Agreement, and make other consequential changes. The Amendment Deed will be governed by NSW law.

**Representations:**

Each Obligor will make representations as are usual for facilities of this nature and which are consistent with the general security deed granted for the Macquarie Bank Facility (the "**Macquarie Security**").

**Undertakings:**

Undertakings will be included in the Facility Agreement as are usual for facilities of this nature.

**Events of Default:**

Events of Default will be included in the Facility Agreement as are usual for facilities of this nature.

While an Event of Default subsists, the Lender may (among other things) cancel any undrawn commitment and declare all sums owing immediately due and payable.

**Conditions Precedent:**

These will include the following, together with such other conditions precedent as are usual for facilities of this nature:

- (a) finalisation and execution of the Facility Agreement;
- (b) finalisation and execution of the Bid Agreement between SEMAFO and Orbis ("**Bid Agreement**");
- (c) the Bid Agreement not having been terminated by either



party;

- (d) finalisation and execution of the Assignment Deed, and completion of the purchase under it (the purchase to take effect once the conditions precedent in the Facility Agreement (other than this one) are satisfied);
- (e) finalisation and execution of the Amendment Deed;
- (f) SEMAFO having received valid acceptances under its takeover offers for Orbis shares for not less than 50.1% of the issued shares of Orbis, the offer having been declared unconditional and there being no right of withdrawal in relation to any such acceptances;
- (g) the changes to the Orbis board contemplated by the Bid Agreement having been implemented;
- (h) the provision of a certificate with the Projected Cashflow Schedule annexed in the form set out in Schedule 2 signed by the Managing Director and the Chief Financial Officer of Orbis ("**Certificate**"), setting out the individual liabilities and obligations (whether present or future, fixed, actual or contingent) of Orbis as at the date of the Certificate (totalling A\$18,008,854) and confirming that there are no liabilities or obligations (whether present or future, fixed or unascertained, actual or contingent) of Orbis in excess of \$300,000 in aggregate ("**Buffer Threshold**") as at the date of the Certificate, other than as fully and fairly disclosed in that Certificate. A bring-down certificate signed by the Managing Director and the Chief Financial Officer of Orbis must be provided with each drawdown request, and must certify that as at the date of that bring-down certificate there are no additional liabilities or obligations (whether present or future, fixed or unascertained, actual or contingent) of Orbis in excess of the Buffer Threshold, other than:
  - (i) as fully and fairly disclosed in the original Certificate;
  - (ii) as expressly agreed to by SEMAFO since the original Certificate; or
  - (iii) items noted in the Certificate as being excluded from the Buffer Threshold; and
- (i) no Event of Default subsisting.

**Fees:**

A\$668,000. This will be due and payable in full on first drawdown, and will be deducted from the amount of the first drawdown. If the first drawdown is the purchase of the promissory notes, then there

will be an additional deemed drawdown at the same time to pay for this fee. This fee is not refundable in any circumstances.

**Confidentiality:**

The terms and conditions stipulated in this term sheet, including its existence, shall be kept strictly confidential by each Party and shall not be disclosed to any third party (other than each Party's professional advisers, members of the board of directors or officers) unless required by applicable laws, regulations or policies or stock exchange rules of competent jurisdiction of each Party (it being acknowledged that the key terms of these arrangements will be publicly disclosed in a joint announcement to the Australian Securities Exchange to be made in connection with a proposed price increase for SEMAFO's takeover offers for Orbis shares).

**Assignments and Transfers:**

No Obligor may assign or otherwise transfer any of its rights or obligations without the prior written consent of SEMAFO. SEMAFO may not assign or otherwise transfer any of its rights or obligations without the prior written consent of the Borrower (not to be unreasonably withheld or delayed) and provided that no consent will be required from the Borrower if an Event of Default subsists.

**Governing Law:**

The laws of the State of Queensland. No process agent will be required for any party incorporated outside Queensland.

**Jurisdiction:**

Non-exclusive jurisdiction of the courts of Queensland.

**Counterparts**

This document may be executed in counterparts.

**EXECUTED** as an agreement.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED** by **SEMAFO INC.:**

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **ORBIS GOLD LIMITED:**

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SCHEDULE 1 – PROJECTED CASHFLOW SCHEDULE**

**SCHEDULE 2 - CERTIFICATE**

**ANNEXURE B – BID AGREEMENT**



## Bid Agreement

**SEMAFO Inc.**

A company incorporated under the laws of Quebec, Canada

and

**Orbis Gold Limited**

ABN 59 120 212 017

2015

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## BID AGREEMENT

### BETWEEN:

- (1) **SEMAFO Inc.**, a company incorporated under the laws of Quebec, Canada (**SEMAFO**); and
- (2) **Orbis Gold Limited** ABN 59 120 212 017 (**Orbis**).

### RECITALS

- (A) SEMAFO has made the Takeover Bid. SEMAFO now proposes to:
  - (1) make the Variation to the Takeover Bid; and
  - (2) extend the Facility to Orbis,and the Orbis Board proposes to recommend the Varied Takeover Bid in the absence of a Superior Proposal.
- (B) The parties have entered into this document to agree on certain matters in relation to the Variation, the Facility and the conduct of the Varied Takeover Bid.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this document.

**Acceptance Time** means 4.00pm (Sydney, Australia time) on the date which is not more than 5 Business Days after the Variation is effected.

**Agreed Announcement** means the announcement to be made by each of SEMAFO and Orbis in the form set out in Schedule 1.

**Agreed Facility Terms** means the terms set out in Schedule 2.

**Announcement Date** means the date of release of the Agreed Announcement.

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

**Bidder's Statement** means SEMAFO's bidder's statement, dated 1 December 2014 (as varied from time to time).

**Business Day** means a day (other than Saturday, Sunday or public holiday) on which banks are open for general banking business in Queensland, Australia.

**Certificate** has the meaning given to it in clause 9.1(b)(vi).

**Claim** means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Compensating Amount** has the meaning given to it in clause 3.4.

**Competing Proposal** means any proposal, transaction, arrangement or offer (whether from a person with whom Orbis has previously been in discussions or not) that would, if completed substantially in accordance with its terms, result in any person or persons other than SEMAFO:

- (a) acquiring:
  - (i) directly or indirectly, an interest in all or a substantial part of the assets of Orbis; or
  - (ii) a relevant interest in more than 25% of the voting shares of Orbis or otherwise acquire control of Orbis within the meaning of section 50AA of the Corporations Act; or
- (b) otherwise acquiring or merging with Orbis whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy back, sale or purchase of assets, joint venture, reverse takeover, dual listed company structure or other synthetic merger or any other transaction or arrangement.

**Conditions** mean the conditions set out in Section 9.9 of the Bidder's Statement.

**Consideration** means the consideration under the Takeover Bid, currently being A\$0.65 per Share, and proposed to be varied in accordance with the Variation.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified by any relevant exemption or declaration by ASIC.

**Exclusivity Period** means the period beginning on the date of this document and ending on the earlier of:

- (a) the end of the Offer Period; and
- (b) termination of this document.

**Existing Knowledge** means matters which have been fully and fairly disclosed in writing to Benoit Desormeaux, Eric Paul-Hus or Martin Milette prior to the date of this agreement.

**Facility** means the A\$17.4 million bridge facility to be extended to Orbis by SEMAFO in accordance with the Agreed Facility Terms.

**Law** means all statutes, regulations, statutory rules, orders, and terms and conditions of any grant of approval, permission, authority or licence of any Public Authority.

**Listing Rules** means the listing rules of ASX and the Toronto Stock Exchange.

**Offer** means each offer to acquire Orbis Shares made by SEMAFO to Orbis shareholders in connection with the Takeover Bid.

**Offer Period** means the period during which Offers are open for acceptance, commencing on 15 December 2014 and ending on 20 February 2015 (unless extended in accordance with the Corporations Act).

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

**Orbis Directors** means each director of Orbis.

**Orbis Share** means an ordinary share in the capital of Orbis.

**Projected Cashflow Schedule** has the meaning given to it in clause 9.1(b)(vi).

**Public Authority** means any federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, administrative, statutory or judicial entity, arbitral body, commission, board, bureau or authority or agency properly constituted pursuant to any applicable laws.

**Representative** of a person means an employee, agent, officer, director, adviser or financier of the person and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

**Superior Proposal** means a bona fide, Competing Proposal received by Orbis after the date of this agreement which the Orbis Board determines, acting both in good faith and reasonably:

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal and the person or persons making it; and
- (b) would, if substantially completed in accordance with its terms, be more favourable to Orbis shareholders than the Proposal, taking into account all aspects of the Competing Proposal.

**Takeover Bid** means the off-market takeover bid by SEMAFO for all Orbis Shares, dated 15 December 2014.

**Target's Statement** means Orbis' target's statement, dated 18 December 2014.

**Unacceptable Circumstances** has the meaning given in section 657A of the Corporations Act.

**Variation** means a formal variation of the Takeover Bid in accordance with section 650D of the Corporations Act, pursuant to which SEMAFO will increase the Consideration to not less than A\$0.713 per Orbis Share.

**Variation Date** means the date SEMAFO makes the Variation, which is to be no later than 13 February 2015.

**Varied Takeover Bid** means the Takeover Bid, as varied in accordance with the Variation.

## 1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) Words and phrases which are defined by the Corporations Act have the same meaning in this document. If a special meaning is given for the purposes of Chapter 6 or 6A or a provision of Chapter 6 or 6A of the Corporations Act the word or phrase has that meaning.
- (b) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) currency or \$ is to Australian currency; and
  - (vi) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
  - (d) A word which suggests one gender includes the other genders.
  - (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (g) The expression **this document** includes the agreement recorded in this document.
  - (h) The words **subsidiary** and **related bodies corporate** have the same meaning as in the Corporations Act.

## 2. **THE VARIED TAKEOVER BID**

### 2.1 **Condition precedent to SEMAFO making the Variation and extending the Facility**

SEMAFO agrees to make the Variation and extend the Facility to Orbis by the Variation Date, if Orbis makes the Agreed Announcement to ASX on the Announcement Date.

### 2.2 **Orbis Board recommendation**

Orbis represents and warrants to SEMAFO that:

- (a) the Orbis Directors will unanimously recommend that the holders of Orbis Shares accept the Varied Takeover Bid in the absence of a Superior Proposal;
- (b) each Orbis Director will not withdraw, revise, revoke or make any public announcement inconsistent with the recommendation described in clause 2.2(a) unless:
  - (i) that Director, acting in good faith, determines (after taking written advice from Orbis' external lawyers or his own legal adviser) that he is, by virtue of his fiduciary or statutory duties, required to change, withdraw or modify such recommendation or make a recommendation or statement that is inconsistent with it; and
  - (ii) the matching right procedure in clause 5.8 has been fully complied with by Orbis; and

- (c) each Orbis Director has confirmed to Orbis in writing each of the matters set out in paragraphs (a) to (b) inclusive.

### 3. **COMPENSATING AMOUNT**

#### 3.1 **Orbis acknowledgement**

- (a) Orbis acknowledges that, if SEMAFO enters into this document and the conditions precedent in clause 2.1 are not satisfied, SEMAFO will have incurred significant costs and losses, including significant opportunity costs.
- (b) Orbis acknowledges and agrees that the costs and losses actually incurred by SEMAFO under this clause 3 will be of such nature that they cannot accurately be ascertained, but that the Compensating Amount is a genuine and reasonable pre-estimate of the costs and losses that would actually be suffered by SEMAFO in such circumstances and has been calculated to reimburse SEMAFO for such costs and losses.
- (c) Orbis represents and warrants that:
  - (i) it has received legal advice on this document and the operation of this clause 3; and
  - (ii) it considers this clause 3 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 3 in order to secure the significant benefits to it (and Orbis shareholders) resulting from the Varied Takeover Bid.

#### 3.2 **Undertaking**

Subject to clause 3.3, Orbis undertakes to pay the Compensating Amount to SEMAFO if:

- (a) a Competing Proposal is announced or made during the Offer Period and is completed at any time prior to six months after the end of the Offer Period and, as a result, a person other than SEMAFO:
  - (i) acquires a legal, beneficial or economic interest in, or control of, 30% or more of Orbis Shares; or
  - (ii) acquires (whether or not that agreement is conditional), the whole or a substantial or significant part of Orbis' assets, business or property;
- (b) Orbis accepts or enters into or offers to accept or enter into, any agreement arrangement or understanding regarding a Competing Proposal before the end of the Offer Period;
- (c) any Orbis Director:
  - (i) does not recommend the Varied Takeover Bid;
  - (ii) withdraws or adversely modifies an earlier recommendation of the Varied Takeover Bid;
  - (iii) approves or recommends or makes an announcement in support of a Competing Proposal; or
  - (iv) announces an intention to do any of these acts;

- (d) Orbis or any Orbis Director does (or omits to do) anything, excluding anything that is Existing Knowledge, which results in any of the Conditions being breached and SEMAFO does not declare the Varied Takeover Bid free of the breached Condition. SEMAFO is under no obligation to declare the Varied Takeover Bid free of the breached Condition;
- (e) there is a material breach of this agreement by Orbis and that material breach is not remedied within five Business Days of Orbis receiving notice to remedy from SEMAFO; or
- (f) there is a breach of any of the Conditions in Section 9.9(b), (f), (h) or (j) of the Bidder's Statement, other than a breach arising directly from Existing Knowledge.

### 3.3 **No payment**

The Compensating Amount is not payable under this clause 3 if:

- (a) SEMAFO accepts a Superior Proposal in respect of the Orbis Shares it owns; or
- (b) SEMAFO acquires a relevant interest in more than 50% of Orbis Shares and the Offer becomes or is declared unconditional.

### 3.4 **Compensating Amount**

The Compensating Amount is A\$1.75 million plus the amount of any GST payable.

### 3.5 **Demand for payment**

Any demand by SEMAFO for payment of the Compensating Amount must be in writing and Orbis must pay the Compensating Amount to SEMAFO within ten Business Days of receipt of the demand.

### 3.6 **Compliance with law**

- (a) **Unlawful Amount** means all or any part of the payment required to be made under clause 3.2 that is found by the Takeovers Panel or a Court to be unlawful, involve a breach of director's duties or to constitute Unacceptable Circumstances.
- (b) If the Takeovers Panel or a Court finds an Unlawful Amount and the period for lodging an application for review or a notice of appeal of that decision has expired without such application or notice having been lodged or if an application for review or a notice of appeal has been lodged with the Takeovers Panel or a Court within the prescribed period and the relevant review Panel or Court finds an Unlawful Amount then:
  - (i) the undertaking under clause 3.2 does not apply to the extent of the Unlawful Amount; and
  - (ii) SEMAFO must refund any Unlawful Amount paid to it under this document.

### 3.7 **Repayment**

If, after the Compensating Amount is paid by Orbis under this clause 3, clause 3.3 applies such that the Compensating Amount was not actually payable, SEMAFO must within ten Business Days of receipt of a demand in writing from Orbis, repay to Orbis the Compensating Amount.

### 3.8 **Exclusive remedy**

Payment by Orbis of the Compensating Amount due under this clause 3 will be SEMAFO's sole and exclusive remedy against Orbis for any loss, cost, damage or expense suffered or incurred by SEMAFO in connection with the act or event giving rise to the obligation to pay the Compensating Amount.

## 4. **FACILITATING THE VARIED TAKEOVER BID**

### 4.1 **Notice of false warranty or breach**

Each party must promptly advise the other party of any change or event which causes (or, so far as can reasonably be foreseen, would cause):

- (a) a representation or warranty given by the party in this document to be false or misleading; or
- (b) a material breach of this document by the party.

### 4.2 **Promoting the Varied Takeover Bid**

In the absence of any Orbis Director withdrawing, revising, revoking or qualifying or making any public announcement inconsistent with the recommendation described in clause 2.2(b), Orbis agrees:

- (a) not to make any public statement that could suggest that the Varied Takeover Bid is not unanimously recommended by the Orbis Directors; and
- (b) to the extent reasonably requested to do so by SEMAFO during the Offer Period, support the Varied Takeover Bid and participate in efforts reasonably required by SEMAFO to promote the merits of the Varied Takeover Bid by using reasonable efforts from Peter Spiers and any other Orbis Director mutually agreed upon by the parties to meet with key Orbis shareholders, analysts, management and other parties mutually agreed with SEMAFO (acting reasonably) in relation to the Varied Takeover Bid,

but only to the extent that the Orbis Board reasonably considers it may do so without the Orbis Directors breaching their legal or fiduciary duties.

### 4.3 **Conditions**

- (a) Without limitation to clause 3, each of the parties must, to the extent within its power to do so, use its reasonable endeavours to ensure that the Conditions are satisfied as soon as reasonably practicable after the date of this document and that no Conditions are breached.
- (b) SEMAFO agrees that:
  - (i) it will not rely on any Condition in respect of any information that is Existing Knowledge; and
  - (ii) upon obtaining valid acceptances into the Offer that in aggregate account for more than 50% of Orbis Shares on issue, SEMAFO will waive any outstanding Conditions and declare the Offer unconditional, provided that there is no subsisting breach of any Condition at that time other than a breach arising from Existing Knowledge.
- (c) Orbis agrees not to do (or omit to do) anything which will, or is likely to, result in any of the Conditions being breached.



- (d) Orbis must promptly provide SEMAFO with all information and assistance reasonably required by SEMAFO to support any submissions to any Public Authority with regard to the Varied Takeover Bid.
- (e) Nothing in this clause 4 prevents Orbis or the Orbis Board from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the Orbis Board, constitute a breach of the legal or fiduciary duties of the directors of Orbis. The reasonable opinion of the Orbis Board must be based on specific written legal, and any other appropriate written advice.
- (f) To avoid any doubt, in this document, a reference to a Condition being breached includes a reference to a Condition not being, or not being capable of being, satisfied.
- (g) If any event occurs or becomes apparent to a party which would cause any of the Conditions to be breached, that party must, to the extent it is actually aware of such information, immediately notify the other party in writing of the event.

## 5. **EXCLUSIVITY**

### 5.1 **Cease existing discussions**

- (a) Orbis represents and warrants to SEMAFO that immediately following the execution of this document it will:
  - (i) unconditionally cease and terminate any discussions or negotiations with all third parties relating to any Competing Proposal that have been conducted prior to the date of this document; and
  - (ii) immediately require all persons (other than SEMAFO) to whom it has provided non-public information between the period commencing on 1 September 2014 and the date of this document in connection with a Competing Proposal to immediately return to it and delete from retrieval systems and databases any information about Orbis provided to it in connection with such Competing Proposal (which request Orbis is entitled to make, and the third party is obliged to comply with, under the terms of binding confidentiality arrangements entered into with those parties) and undertake at SEMAFO's cost any further actions in relation to retrieval or deletion of such information as reasonably requested by SEMAFO.
- (b) Orbis must, by no later than five Business Days after this document is executed, notify SEMAFO in writing that the notifications required by this clause 5.1 have been given.

### 5.2 **No Shop**

- (a) During the Exclusivity Period, Orbis must not and must ensure that its Representatives do not directly or indirectly solicit, initiate, invite or encourage any inquiries, proposals, discussions or negotiations, or communicate any intention to do any of these things, regarding any Competing Proposal.
- (b) Nothing in paragraph (a) prevents Orbis from continuing to make normal presentations to, and respond to enquiries from brokers, portfolio investors, analysts, shareholders and media in the ordinary course in relation to the Varied Takeover Bid or its business generally provided those communications do not concern or relate to a Competing Proposal.

### 5.3 **No talk**

Subject to clause 5.6, during the Exclusivity Period, Orbis must not and must ensure that its Representatives do not directly or indirectly participate in any discussions or negotiations with any person regarding, or that could reasonably be expected to lead to, a Competing Proposal, even if:

- (a) those discussions or negotiations were not directly or indirectly encouraged, solicited, invited or initiated by Orbis; or
- (b) that person has publicly announced a Competing Proposal.

For the avoidance of doubt, this clause 5.3 does not apply to the normal provision of information to a Public Authority, auditors, advisers and financiers in the ordinary course of business or making presentations to, or responding to enquiries from, shareholders, brokers, portfolio investors, analysts and media in the ordinary course of business.

### 5.4 **No due diligence**

- (a) Subject to clause 5.6, during the Exclusivity Period, Orbis must not and must ensure that its Representatives do not, make available to any other person or permit any other person to receive non-public information relating to Orbis, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal (**Diligence Information**).
- (b) Where, in reliance on clause 5.6, Orbis or any of its Representatives proposes to provide any Diligence Information to any third party in connection with or for the purposes of a current or future Competing Proposal, it must, to the extent that SEMAFO has not previously been provided with the information, provide SEMAFO with a complete copy of that information at the same time as it is provided to the third party.

### 5.5 **Orbis to notify SEMAFO**

- (a) During the Exclusivity Period, Orbis must immediately notify SEMAFO in writing if it proposes, in circumstances permitted by clause 5.6, to take any action of a kind that is set out in clause 5.3 or 5.4.
- (b) During the Exclusivity Period, Orbis must promptly notify SEMAFO in writing if in circumstances permitted by clause 5.6:
  - (i) Orbis enters into discussions or negotiations with a party that has proposed (or may reasonably be expected to propose) a Competing Proposal; or
  - (ii) Orbis makes available to any person, or permits any person to receive, any Diligence Information.
- (c) A notice given under this clause 5.5 must be accompanied by all material details of the relevant event, including:
  - (i) the identity of the person or persons making the approach or request or on whose behalf any such action was taken (**Rival Bidder**);
  - (ii) the terms and conditions of any Competing Proposal (to the extent known); and
  - (iii) the circumstances in which any discussions or negotiations are held with a Rival Bidder or information is provided to the Rival Bidder.

## 5.6 **Fiduciary exception**

The restrictions in clauses 5.3, 5.4 and 5.8 and the notification obligations in clause 5.5 do not apply to the extent that they restrict Orbis or the Orbis Board from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited or initiated by Orbis or one of its Representatives in contravention of clause 5.2) provided that in the opinion of the Orbis Board, reasonably formed in good faith and for a proper purpose:

- (a) the Competing Proposal is bona fide and is made in writing by or on behalf of a person that the Orbis Board considers is of reputable commercial standing;
- (b) the Competing Proposal if substantially completed in accordance with its terms, would, or would reasonably be expected to lead to, a transaction which is more favourable to Orbis shareholders than the Varied Takeover Bid, after taking into account all aspects of the Competing Proposal; and
- (c) taking or failing to take the action with respect to the Competing Proposal would, or would be likely to, involve a breach of the fiduciary or statutory duties of the directors of Orbis, where the opinion of the Orbis Board must be formed after taking written advice from Orbis' legal advisers.

## 5.7 **Provision of information**

- (a) Without limiting Orbis' obligations under clauses 5.5, if any Orbis Director proposes to (whether or not subject to conditions) change his or her recommendation of the Offer so that he or she can recommend a Competing Proposal (**Rival Transaction**), Orbis must give SEMAFO written notice (**Relevant Notice**) of such proposed change of recommendation.
- (b) A Relevant Notice must include:
  - (i) all the material terms and conditions (including price) of the Rival Transaction;
  - (ii) a copy of any material confidential information concerning Orbis or any of its subsidiaries provided to any person associated with the Rival Transaction which has not previously been provided to SEMAFO; and
  - (iii) details of the basis on which the Orbis Director intends to change his or her recommendation.

## 5.8 **Matching Right**

- (a) SEMAFO will have the right, but not the obligation, at any time during the period of five Business Days following receipt of a Relevant Notice (**Matching Right Period**) to amend the terms of the Offer (including, but not limited to, increasing the amount of consideration offered under the Varied Takeover Bid or proposing any other form of transaction (each a **Counter Proposal**)), and if it does so then the Orbis Directors must review the Counter Proposal in good faith. If a majority of the Orbis Directors determine that the Counter Proposal would be more favourable to Orbis shareholders than the Rival Transaction (each an **Orbis Recommending Director**), then Orbis and SEMAFO must use their best endeavours to, as soon as practicable, enter into the necessary documentation to give effect to the revised Offer and Orbis must ensure that each of the Orbis Recommending Directors recommends the Counter Proposal to Orbis shareholders and does not recommend the Rival Transaction.

- (b) Subject to clause 5.6, during the Matching Right Period:
  - (i) no Orbis Director is permitted to change his or her recommendation of the Offer or to make any public statement to the effect that he or she may do so at some further point in time; and
  - (ii) Orbis must not enter into any agreement, arrangement or understanding in respect of the Rival Transaction.
- (c) For the purposes of this clause 5.8, each successive material modification to a Rival Transaction will constitute a new Rival Transaction in respect of which Orbis must comply with its obligations under this clause 5.8.

## 6. CONDUCT OF BUSINESS

### 6.1 Conduct of Orbis' business

- (a) From the date of this document until the earlier of the end of the Offer Period and the date when this document is terminated, Orbis must, and must cause each of its related bodies corporate to, conduct their respective businesses only in, and not take any action except in, the ordinary course and consistent with past practice or as contemplated by this document or otherwise agreed by SEMAFO (such agreement not to be unreasonably withheld or delayed).
- (b) Without limiting paragraph (a), Orbis must use reasonable endeavours to ensure that it and each of its related bodies corporate:
  - (i) maintain their businesses and assets consistent with past practice; and
  - (ii) preserve their relationships with suppliers, licensors, licensees, partners, Public Authorities and others with whom they have business dealings.
- (c) Without limiting paragraph (a), Orbis must not and must ensure that each of its related bodies corporate do not without the prior written consent of SEMAFO (such consent not to be unreasonably withheld or delayed):
  - (i) dispose or agree to dispose of any securities, business, asset, interest in a joint venture, entity or undertaking, the value of which exceeds A\$750,000, to any person other than another related body corporate of Orbis;
  - (ii) acquire or agree to acquire any securities, business, asset, interest in a joint venture, entity or undertaking from any person other than another related body corporate of Orbis, excluding capital expenditure which does not exceed A\$750,000;
  - (iii) without limiting clause 6.1(c)(iv), enter into, amend or agree to enter into or amend, any contract, commitment or other arrangement (other than in connection with the Facility) where:
    - (A) the term of the contract, commitment or arrangement is greater than 6 months; or
    - (B) the contract, commitment or arrangement involves Orbis incurring expenditure in excess of A\$750,000 per annum;

- (iv) either:
    - (A) enter into a new employment contract with an existing or potential employee of Orbis or any of its related bodies corporate other than to replace staff or fill any vacant positions where the total annual remuneration and other benefits of the employee under the employment contract is less than A\$250,000 per annum; or
    - (B) materially amend an employment contract with an existing employee of Orbis or any of its related bodies corporate;
  - (v) settle any legal proceedings, claim, investigation, arbitration or other like proceedings;
  - (vi) commence any litigation, arbitration or other legal proceedings;
  - (vii) borrow or agree to borrow any money or amend or agree to amend any contract, commitment or other arrangement in connection with Orbis' existing facility or borrowing arrangements with its financiers, other than in connection with the Facility;
  - (viii) terminate or assign, dispose of, encumber or otherwise deal with any rights under, any contract, commitment or other arrangement, or give its consent to any other party or parties to assign, dispose of, encumber or otherwise deal with their respective rights under any contract, commitment or other arrangement where:
    - (A) the term of the contract, commitment or arrangement is greater than 6 months; or
    - (B) the contract, commitment or arrangement involves Orbis incurring expenditure in excess of A\$750,000 per annum;
  - (ix) enter into, or amend, any arrangement with its advisers (including financial and legal) in respect of the transactions contemplated by this document; or
  - (x) authorise, commit or agree to do any of the matters set out above.
- (d) Without limiting any other provision of clause 6.1, Orbis must conduct its business so as to ensure that the Certificate and the Projected Cashflow Schedule are true and correct as at the date they are given (including when repeated in accordance with the Agreed Facility Terms).

## 6.2 **SEMAFO to be kept informed**

From the date of this document until the earlier of the end of the Offer Period and the date when this document is terminated:

- (a) Orbis must keep SEMAFO fully informed of:
  - (i) the conduct and progress of any litigation or Claims affecting Orbis or any of its subsidiaries or their respective businesses, including litigation or Claims that are threatened or pending (**Litigation Matters**);
  - (ii) any notice or communication including from any Public Authority that in any material manner affects Orbis or any of its subsidiaries or their respective businesses;

- (iii) any Claim being made against Orbis, or Orbis or any of the Orbis Directors become aware of any event, matter or circumstance, which is or may reasonably be likely to give rise to a Claim,

and Orbis must promptly provide to SEMAFO all information and details that are available to Orbis about any of the above matters that may be reasonably requested by SEMAFO;

- (b) Orbis must consult with and take into account the views and comments of SEMAFO in relation to the conduct of the Litigation Matters or any Claim; and
- (c) Orbis must consult with SEMAFO and take into account the views and comments of SEMAFO in relation to any communications by Orbis or any of its Subsidiaries with any Public Authorities that materially affect Orbis' business.

## 7. **VARIED TAKEOVER BID**

### 7.1 **Variation**

Following the Variation, SEMAFO may:

- (a) vary the Varied Takeover Bid in any manner permitted by the Corporations Act; and
- (b) adjust the Varied Takeover Bid consideration by the amount of any dividends or distributions paid to Orbis shareholders after the Announcement Date.

### 7.2 **Waiver of conditions and extension**

Subject to the Corporations Act, SEMAFO may declare the Varied Takeover Bid to be free from any Condition or extend the Varied Takeover Bid at any time.

### 7.3 **Appointment of directors**

Orbis represents and warrants to SEMAFO that each Orbis Director has confirmed to it that he or she will, and Orbis must, procure that the Orbis Board will:

- (a) As soon as practicable after SEMAFO acquires a relevant interest in more than 50% of Orbis Shares, and the Offer becomes or is declared unconditional, the following Orbis Directors will retire from the Orbis Board, to be replaced by three nominees of SEMAFO:
  - (i) John Bovard, Non-Executive Chairman;
  - (ii) Nicholas Mather, Non-Executive Director; and
  - (iii) Kevin Tomlinson, Non-Executive Director,(together, the **Retiring Directors**).
- (b) After SEMAFO acquires a relevant interest in more than 50% of Orbis Shares and the Offer becomes or is declared unconditional, Michele Muscillo, Non-Executive Director will, if so requested by SEMAFO, retire from the Orbis Board, to be replaced by an additional independent director nominated by SEMAFO.
- (c) The Retiring Directors and Michele Muscillo have each provided a letter of resignation to Orbis which will be held in escrow until SEMAFO's relevant interest in Orbis has reached the requisite thresholds set out in clauses 7.3(a) and 7.3(b).

**8. PUBLIC ANNOUNCEMENTS**

- (a) Subject to clause 8(b), each party must use its best endeavours to consult with the other party prior to making any public announcements or communications to shareholders in connection with the Varied Takeover Bid (other than the Agreed Announcement).
- (b) Where a party is required to make an announcement by applicable Law or Listing Rules or make any disclosure relating to the Varied Takeover Bid (including any supplementary Bidder's Statement or Target's Statement) it may do so only after it has:
  - (i) given the other party as much notice as is reasonably practicable; and
  - (ii) consulted with the other party as to the content of that announcement or disclosure.

**9. WARRANTIES**

**9.1 Orbis warranties**

- (a) Orbis represents and warrants to SEMAFO that each of the warranties set out in clause 9.1(b) is true and correct:
  - (i) as at the date of this document; and
  - (ii) on each day from the date of this document until the end of the Offer Period.
- (b) Orbis represents and warrants that:
  - (i) it and each of its subsidiaries are corporations validly existing under the laws of their respective places of incorporation;
  - (ii) it has the power and authority to enter into this document and perform and observe all its terms;
  - (iii) this document constitutes its legal, valid and binding agreement enforceable against it in accordance with its terms;
  - (iv) neither it nor any of its subsidiaries is bound by any contract which may restrict its right or ability to enter into or perform the agreement contained in this document which is material in the context of Orbis and its related bodies corporate taken as a whole;
  - (v) no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it or any of its subsidiaries for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets and no regulatory action has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this document;

- (vi) the certificate dated on or about the date of this agreement, provided in Schedule 3 to this agreement and signed by the Managing Director and Chief Financial Officer of Orbis (**Certificate**) and the projected cashflow schedule annexed to it (**Projected Cashflow Schedule**), sets out all of the individual liabilities or obligations (whether present or future, fixed, actual or contingent) of Orbis as at the date of the Certificate (totalling A\$18,008,854) and there are no liabilities or obligations (whether present or future, fixed or unascertained, actual or contingent) of Orbis in excess of \$300,000 in aggregate as at the date of the Certificate, other than as fully and fairly disclosed in the Certificate and the Projected Cashflow Schedule;
- (vii) there are no breaches or failures to comply with Orbis' (or any of Orbis' subsidiaries) existing facilities or borrowing arrangements with its financiers that have not been duly waived;
- (viii) Orbis has complied with Listing Rule 3.1 in relation to continuous disclosure and has to date and will continue to comply with Division 4 of Part 6.5 and Chapter 6B of the Corporations Act;
- (ix) Orbis is not aware of any act, omission, event or fact that would result in one or more of the conditions set out in Section 9.9 of the Bidder's Statement being triggered, other than in connection with Existing Knowledge or as disclosed by Orbis to SEMAFO in the letter it has delivered to SEMAFO on the date of this document;
- (x) no regulatory action of any nature has been taken as at the date of this document which would prevent, inhibit or otherwise have a material adverse effect on Orbis' ability to fulfil its obligations under this document;
- (xi) as at the date of this document, Orbis has the securities on issue set out in Section 4.6 of the Bidder's Statement and has no other issued securities; and
- (xii) neither Orbis nor any of its subsidiaries has issued, granted or agreed to issue or grant any other shares or securities convertible into shares, other than the securities referred to in Section 4.6 of the Bidder's Statement.

## 9.2 **SEMAFO warranties**

- (a) SEMAFO represents and warrants to Orbis that each of the warranties set out in clause 9.2(b)(i) to 9.2(b)(v) is true and correct:
  - (i) as at the date of this document; and
  - (ii) on each day from the date of this document until the end of the Offer Period.
- (b) SEMAFO represents and warrants to Orbis that:
  - (i) it is a company validly incorporated under the laws of Quebec, Canada;
  - (ii) it has the power and authority to enter into this document and perform and observe all its terms; and
  - (iii) this document constitutes its legal, valid and binding agreement enforceable against it in accordance with its terms;
  - (iv) it has the power and authority to enter into the Facility;



- (v) it has the financial capability of providing the funds in accordance with the Facility; and
- (vi) as at the date of this document, it is not aware of any act, omission, event or fact that would result in one or more of the conditions set out in Section 9.9 of the Bidder's Statement being triggered, other than in connection with Existing Knowledge.

### 9.3 **Limitations of liability**

A party (**First Party**) is not liable in respect of a Claim in relation to any of its representations and warranties under this document if the fact, matter, circumstance or act giving rise to the claim was:

- (a) required to be done by the First Party under this document;
- (b) approved by the other party in writing prior to the fact, matter, circumstance or act occurring; or
- (c) disclosed in writing by the First Party or its advisers to the other party or its advisers prior to the date of this document.

## 10. **TERMINATION**

### 10.1 **Termination for material breach**

A party (the **Terminating Party**) may terminate this document at any time by notice to the other party if:

- (a) the other party is in breach of any clause of this document, which breach is material in the context of the Varied Takeover Bid;
- (b) the Terminating Party has given notice to the other party setting out full details of the material breach and stating an intention to terminate this document; and
- (c) the material breach has continued to exist for five Business Days from the time such notice was given.

### 10.2 **Other termination rights**

- (a) SEMAFO may terminate this document at any time by notice to Orbis if:
  - (i) a Competing Proposal is made or publicly announced for Orbis by a third party and that Competing Proposal is recommended by the Orbis Board;
  - (ii) any member of the Orbis Board does not recommend the Varied Takeover Bid be accepted by Orbis shareholders or, having recommended the Varied Takeover Bid, changes his or her recommendation in relation to the Varied Takeover Bid; or
  - (iii) a person other than SEMAFO or one of its related bodies corporate obtains voting power in Orbis of 30% or more, or a person that has voting power in Orbis of 30% or more increases their voting power by more than 30%, and that person is not a funds manager, bare trustee or custodian (other than a bare trustee or custodian that is acting for or on behalf of a trade or strategic investor).

- (b) Either party may terminate this document at any time by notice in writing to the other party if SEMAFO withdraws the Offer for any reason or the Offer lapses for any reason, including non-satisfaction of a Condition.
- (c) This document automatically terminates on the date on which the Offer Period ends.

### 10.3 **Effect of termination**

In the event of termination of this document by either SEMAFO or Orbis pursuant to clause 10, the document will have no further effect, other than in respect of any liability for antecedent breach of this document and provided that this clause 10 and clauses 1 (Interpretation), 3 (Compensating Amount), 11 (Notices) and 13 (General) survive termination.

## 11. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received three working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and fax number are those set out below, or as the person notifies the sender:

### **SEMAFO**

Address: 100 Boulevard Alexis-Nihon,  
7th floor  
Saint-Laurent (Quebec) Canada  
H4M 2P3

Fax number: 514-744-2291

Email: eric.paulhus@semafo.com

Attention: Vice-President, Law, Chief Compliance Officer and  
Corporate Secretary

### **Orbis**

Address: Level 14  
10 Eagle Street  
Brisbane Qld, 4000

Fax number: (07) 3236 5036

Email: PSpiers@orbisgold.com

Attention: Peter Spiers, Managing Director

## 12. **AMENDMENT AND ASSIGNMENT**

### 12.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

### 12.2 **Assignment**

A party may only assign, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.

## 13. GENERAL

### 13.1 Governing law

- (a) This document is governed by the law of Queensland, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Queensland, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

### 13.2 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver; and

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### 13.3 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

### 13.4 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

### 13.5 GST on claims

- (a) Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) If Orbis pays SEMAFO the Compensating Amount under this document and that gives rise to a liability for GST, Orbis must pay and indemnify SEMAFO on demand against the amount of that GST.
- (c) If a party provides a payment for or any satisfaction of a claim or a right to claim under or in connection with this document (for example, for a breach of any warranty or under an indemnity) that gives rise to a liability for GST, the provider must pay, and indemnify the recipient on demand against, the amount of that GST.
- (d) If a party has a claim under or in connection with this document for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that party is entitled to an input tax credit).

13.6 **Further assurances**

Each party must do all things and execute all further documents necessary to give full effect to this agreement.

13.7 **Counterparts**

This document may be executed in counterparts.

**SCHEDULE 1**

**Agreed Announcement**

**SCHEDULE 2**  
**Agreed Facility Terms**

**SCHEDULE 3**

**Certificate**

**EXECUTED** as an agreement.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED** by **SEMAFO INC.:**

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **ORBIS GOLD LIMITED:**

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name