



**Dominion Mining Limited**  
A.C.N. 000 660 864

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AUSTRALIA

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ASX release

7 February 2011

### **Lodgement of Federal Court orders with ASIC and suspension of trading in Dominion shares**

Dominion advises that it has lodged the Federal Court orders approving the schemes of arrangement in connection with its merger with Kingsgate Consolidated Limited with the Australian Securities and Investments Commission. Copies of those orders are attached to this notice.

The schemes of arrangement therefore became effective today under the Corporations Act.

Dominion also advises that it has requested that ASX suspend Dominion's shares (ASX Code: DOM) from quotation effective from close of trade today, 7 February 2011.

The record date for determining entitlements under the share and option schemes has been determined to be 7.00pm (Sydney time) on Monday, 14 February 2011 and implementation of the schemes is scheduled to occur on Monday, 21 February 2011.

Further announcements regarding the progress of the transaction will be made in due course.

Ross Coyle  
Company Secretary

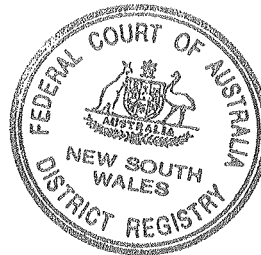
IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY  
GENERAL DIVISION

No: (P)NSD1651/2010

DOMINION MINING LIMITED  
Plaintiff

**ORDER**

**JUDGE:** Justice Emmett  
**DATE OF ORDER:** 4 February 2011  
**WHERE MADE:** Sydney



**THE COURT ORDERS THAT:**

1. Pursuant to s 411(4)(b) of the *Corporations Act 2001*(Cth) (**the Act**), the scheme of arrangement between Dominion Mining Limited (ACN 000 660 864) (**Dominion**) and the holders of full paid ordinary shares of Dominion, in the form annexed hereto and marked "A", be approved.
2. Pursuant to s 411(12) of the Act, Dominion be exempted from compliance with s 411(11) of the Act in respect of the scheme of arrangement referred to in paragraph 1 above.
3. Pursuant to s 411(4)(b) of the Act, the scheme of arrangement between Dominion and the holders of options to acquire fully paid ordinary shares of Dominion, in the form annexed hereto and marked "B", be approved.
4. Pursuant to s 411(12) of the Act, Dominion be exempted from compliance with s 411(11) of the Act in respect of the scheme of arrangement referred to in paragraph 3 above.
5. These orders to be entered forthwith.

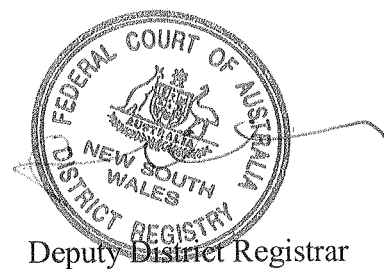
**THE COURT NOTES THAT:**

6. The plaintiff proposes to rely upon s 3(a)(10) of the *Securities Act of 1933* (US) for

exemption from the registration requirements of that Act.

Date that entry is stamped:

4 FEB 2011



Deputy District Registrar

## Annexure "A"



### **Scheme of arrangement made under section 411 of the Corporations Act**

**Parties**                    **Dominion Mining Ltd ABN 37 000 660 864** of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**)  
**Each person registered as a holder of fully paid ordinary shares in the capital of the Target at the Record Date**

### **Background**

- A.            The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this scheme to Target Shareholders and each of the Target and the Bidder have agreed to take certain steps to give effect to this scheme.
- B.            If this scheme becomes Effective, the Bidder will provide or procure the provision of the Share Scheme Consideration to the Scheme Shareholders in accordance with the provisions of this scheme, and the Bidder will acquire all Scheme Shares.

### **Operative provisions**

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## **1. Definitions and interpretation**

### **1.1 Definitions**

In this scheme:

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

**ASX** means, as the context requires, ASX Limited ABN 98 008 624 691 or the securities market conducted by ASX Limited.

**Bidder** means Kingsgate Consolidated Limited ABN 42 000 837 472 of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia.

**Bidder Share Register** means the register of members of the Bidder maintained by or on behalf of the Bidder in accordance with section 168(1) of the Corporations Act.

**Bidder Share Registry** means Security Transfer Registrars Pty Ltd, 770 Canning Highway, Applecross, Western Australia 6153, Australia.

**Bidder Shares** means fully paid ordinary shares in the capital of the Bidder.

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

**CHESS** means the Clearing House Electronic Subregister System for the electronic transfer of Target Shares and other financial products operated by ASX Settlement Pty Limited ABN 49 008 504 532.

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

**Court** means the Federal Court of Australia.

**Effective** means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this scheme.

**Effective Date** means the date on which this scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**End Date** means the date 6 months after the date of the Implementation Agreement.

**Implementation Agreement** means the scheme implementation agreement dated 20 October 2010 between the Target and the Bidder.

**Implementation Date** means the date which is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address shown in the Target Share Register on the Record Date is a place outside Australia and its external territories unless the Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Shareholder with New Bidder Shares when this scheme becomes Effective.

**Listing Rules** means the official listing rules of ASX.

**Marketable Parcel** means a marketable parcel as defined by the market rules of ASX.

**New Bidder Share** means a fully paid ordinary shares in the capital of the Bidder to be provided to Scheme Shareholders under this scheme.

**Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date or such other time and date (after the Effective Date) as the Bidder and the Target agree in writing.

**Registered Address** means, in relation to a Scheme Shareholder, the address of the Scheme Shareholder as recorded in the Target Share Register.

**Sale Agent** means a person appointed by the Bidder to sell or procure the sale or sales of the New Bidder Shares that are attributable to Ineligible Foreign Shareholders under this scheme.

**Scheme Share** means a Target Share on issue on the Record Date.

**Scheme Shareholder** means each person who holds Scheme Shares.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Share Deed Poll** means the deed poll dated 15 December 2010 executed by the Bidder in favour of the Scheme Shareholders.

**Share Scheme Consideration** means 0.31 New Bidder Shares for each Scheme Share.

**Share Scheme Meeting** means the meeting to be convened by the Court in relation to this scheme pursuant to section 411(1) of the Corporations Act.

**Target Director** means a director of the Target.

**Target ESOP** means the Target Employee Share Option Plan.

**Target Options** means an option to acquire one unissued Target Share issued under the Target ESOP or the Target Long Term Incentive Plan.

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

**Target Shares** means fully paid ordinary shares in the capital of the Target.

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Registries Limited of Level 7, 207 Kent Street, Sydney, New South Wales 2000, Australia.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

## 1.2 Business Days

If the day on which any act to be done under this scheme is a day other than a Business Day, that act must be done on or by the next Business Day except where this scheme expressly specifies otherwise.

## 1.3 Listing rules are law

A listing rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this scheme.

## 1.4 General rules of interpretation

In this scheme headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) 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;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

- (f) a reference to a document (including this scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this scheme, and a reference to this scheme includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or **dollar** is to Australian currency;
- (k) a reference to time is to Sydney, Australia time; and
- (l) this scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## **2. Preliminary matters**

### **2.1 Target**

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Target is admitted to the official list of ASX and Target Shares are officially quoted on ASX. As at 15 December 2010, the Target had the following securities on issue:
  - (i) 103,520,259 Target Shares;
  - (ii) 7,191,000 Target Options; and
  - (iii) 500,000 Target performance rights.

### **2.2 Bidder**

- (a) The Bidder is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Bidder is admitted to the official list of ASX and Bidder Shares are officially quoted on ASX.

### **2.3 Implementation Agreement**

The Bidder and the Target have agreed, by executing the Implementation Agreement, to implement this scheme.

## **2.4 Share Deed Poll**

The Bidder has agreed, by executing the Share Deed Poll, to perform its obligations under this scheme, including the obligation to provide or procure the provision of the Share Scheme Consideration to the Scheme Shareholders.

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## **3. Conditions precedent**

### **3.1 Conditions**

- (a) This scheme is conditional on:
- (i) all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) having been satisfied or waived in accordance with the terms of the Implementation Agreement by 8.00 am on the Second Court Date;
  - (ii) the Implementation Agreement not having been terminated in accordance with its terms before 8.00 am on the Second Court Date;
  - (iii) approval of this scheme by the Court under section 411(4)(b) of the Corporations Act, including with such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder, having been satisfied;
  - (iv) the orders of the Court made under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act approving this scheme coming into effect, under section 411(10) of the Corporations Act; and
  - (v) the condition in clause 3.1(n) of the Implementation Agreement having been satisfied or waived in accordance with the terms of the Implementation Agreement.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) is a condition precedent to the operation of clauses 4.3 and 5.
- (c) This scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

### **3.2 Certificate in relation to conditions**

The Target and the Bidder must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming whether or not as at 8.00 am on the Second Court Date all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) have been satisfied or waived.

### **3.3 Conclusive evidence**

The giving of a certificate by the Target and the Bidder under clause 3.2 will be conclusive evidence of the matters referred to in the certificate.



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## **4. Implementation**

### **4.1 Lodgement of Court orders**

The Target must lodge with ASIC an office copy of any Court orders under section 411(10) of the Corporations Act approving this scheme by 5.00 pm on the first Business Day following the date on which the Court approves this scheme or by 5.00 pm on the first Business Day following the date on which the Court orders are entered, whichever is later (or such other date as the Target and Bidder agree).

### **4.2 Consequences of this scheme becoming Effective**

If this scheme becomes Effective:

- (a) it will override the constitution of the Target, to the extent of any inconsistency;
- (b) the Bidder must (pursuant to its obligations under the Share Deed Poll) provide or procure the provision of the Share Scheme Consideration in the manner contemplated by clause 5.3;
- (c) subject to the provision of the Share Scheme Consideration under clause 4.2(b), all the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares) will be transferred to the Bidder; and
- (d) the Target will enter the name of the Bidder in the Target Share Register in respect of all the Scheme Shares.

### **4.3 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the provision of the Share Scheme Consideration in the manner contemplated by clause 5.3 and the Bidder providing the Target with written confirmation of that provision, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its officers as agent and attorney of the Scheme Shareholders under clause 8.4 or otherwise) by:
  - (i) the Target delivering to the Bidder a duly completed and executed share transfer form to transfer all the Scheme Shares to the Bidder; and
  - (ii) the Bidder duly executing such transfer form and delivering it to the Target for registration; and
- (b) immediately after receipt of the transfer form in accordance with clause 4.3(a)(ii), the Target must enter the name of the Bidder in the Target Share Register in respect of the Scheme Shares.

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## **5. Share Scheme Consideration**

### **5.1 Amount of Share Scheme Consideration**

Each Scheme Shareholder is entitled to receive the Share Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### **5.2 Fractional entitlement**

If the number of Scheme Shares held by a Scheme Shareholder is such that an entitlement of that Scheme Shareholder to New Bidder Shares is not a whole number then any fractional entitlement will:

- (a) where the entitlement is to half a New Bidder Share or more, be rounded up to the nearest whole number of New Bidder Shares; and
- (b) where the entitlement is to less than half a New Bidder Share, be rounded down to the nearest whole number of New Bidder Shares.

### **5.3 Provision of Share Scheme Consideration**

Subject to clauses 5.3(c), 5.4, 5.5, 5.6 and 5.7, the obligation of the Bidder to provide the Share Scheme Consideration to Scheme Shareholders will be satisfied by the Bidder:

- (a) in the case of Share Scheme Consideration that is required to be provided to Scheme Shareholders, by the Bidder procuring that:
  - (i) the name and address of each such Scheme Shareholder is entered into the Bidder Share Register on the Implementation Date in respect of the New Bidder Shares to which it is entitled under this clause 5; and
  - (ii) a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Shareholder representing or stating, as applicable, the number of New Bidder Shares to be provided to the Scheme Shareholder pursuant to this scheme.
- (b) in the case of Share Scheme Consideration that is required to be provided to the Sale Agent as a result of the operation of clause 5.4, by the Bidder procuring that:
  - (i) the name and registered address of the Sale Agent, as nominee, is entered into the Bidder Register on the Implementation Date in respect of the New Bidder Shares required to be provided to it under this clause 5;
  - (ii) a share certificate or holding statement (or equivalent document) in the name of the Sale Agent is sent to the Sale Agent representing or stating, as applicable, the number of New Bidder Shares so provided to it; and
  - (iii) the Sale Agent, as nominee, sells or procures the sale or sales of those New Bidder Shares, and pays or procures the payment of the proceeds in accordance with clause 5.7; and

- (c) in the case of joint holders of Scheme Shares:
- (i) the New Bidder Shares to be provided under this scheme will be provided to and registered in the names of the joint holders (or the Sale Agent, as applicable);
  - (ii) any cheque required to be sent under clause 5.7 will be made payable to the joint holders and sent to the holder whose name appears first in the Target Share Register on the Record Date; and
  - (iii) any other document required to be sent under this clause 5 must be forwarded to the holder whose name appears first in the Target Share Register on the Record Date

#### **5.4 Ineligible Foreign Shareholders**

The Bidder has no obligation to provide, and will not provide, any New Bidder Shares to any Ineligible Foreign Shareholder under this scheme and, instead, must procure that those New Bidder Shares which, but for this clause 5.4, would be required to be provided to Ineligible Foreign Shareholders are dealt with on behalf of the Ineligible Foreign Shareholders in accordance with clause 5.7.

#### **5.5 Share splitting**

If the Bidder and the Target are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, before the Record Date, been party to a shareholding splitting or division or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Share Scheme Consideration, the Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and registered addresses of all of those Scheme Shareholders;
- (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 the notice has been so given, the Scheme Shareholder specifically identified in the notice shall, for the purposes of the Share Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice shall, for the purposes of the Share Scheme, be taken to hold no Scheme Shares.

#### **5.6 Anti-manipulation**

If the Bidder and the Target are of the opinion that a Scheme Shareholder or other person has, before the Record Date:

- (a) been party to an arrangement resulting in a change in the registered address of the Scheme Shareholder to a jurisdiction so as to make that Scheme Shareholder (the relevant Scheme Shareholder) an Ineligible Foreign Shareholder or a transfer of Target Shares by the person to a person (also the relevant Scheme Shareholder) who would be an Ineligible Foreign Shareholder;

- (b) in circumstances where the Bidder and the Target are of the opinion that the arrangement or transfer was undertaken to achieve that result in order to maximise the cash consideration payable to the relevant Scheme Shareholder,

the Bidder may give notice to the relevant Scheme Shareholder prior to the Implementation Date:

**1.1.1 setting out the name of the relevant Scheme Shareholder and the other persons involved;**

**1.1.2 stating that opinion; and**

**1.1.3 stating what, in its opinion, would have been the holdings and registered addresses at which the Scheme Shares held by the relevant Scheme Shareholder would have been held had the arrangement or transfer not been undertaken,**

and after the notice has been so given, the Scheme Shares held by the relevant Scheme Shareholder shall be taken to be held in the holdings and registered addresses specified in notice.

## **5.7 Sale Agent**

- (a) New Bidder Shares that are required to be dealt with under this clause by virtue of clause 5.4 must be provided by the Bidder to the Sale Agent, as nominee, on the Implementation Date and subsequently sold in accordance with the remaining provisions of this clause 5.7.
- (b) The Bidder must procure that the Sale Agent:
- (i) as soon as practicable after the Implementation Date, sells or procures the sale or sales of the New Bidder Shares provided to it pursuant to clause 5.7(a), in the ordinary course of trading on ASX; and
  - (ii) remits to the Bidder the proceeds of sale (or procures such remittance) (**Share Proceeds**).
- (c) Promptly after receiving the entire Share Proceeds in accordance with clause 5.7(b)(ii), the Bidder must pay, or procure the payment, to each Ineligible Foreign Shareholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where

- B = the number of New Bidder Shares that would have been provided to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder;
- C = the total number of New Bidder Shares which would otherwise have been provided to all Ineligible Foreign Shareholders collectively and which were instead issued to the Sale Agent; and
- D = the Share Proceeds.

- (d) The Bidder must make payments, or must procure that payments are made, to Ineligible Foreign Shareholders under clause 5.7(c) by:
- (i) sending (or procuring the Bidder Share Registry to send) it to the Ineligible Foreign Shareholder's Registered Address by cheque in Australian currency; or
  - (ii) if the Ineligible Foreign Shareholder has a payment direction (that is currently used for the payment of dividends) for a bank account with any Australian ADI (as defined in the Corporations Act) recorded in the Target Share Register as at the Record Date, depositing (or procuring the Bidder Share Registry to deposit) it into that account.
- (e) Payment of an amount to an Ineligible Foreign Shareholder under this clause 5.7 will be in full satisfaction of the obligations of the Bidder to the Ineligible Foreign Shareholder under this scheme in respect of that Ineligible Foreign Shareholder's Share Scheme Consideration.
- (f) If the Bidder receives professional advice that any Tax is required by law to be withheld from any such payment, the Bidder must ensure, or must procure, that the relevant amount is withheld before making the payment to the Ineligible Foreign Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this scheme). The Bidder must ensure, or must procure, that any amount so withheld is paid to the relevant taxation authorities within the time permitted by law, and that a receipt or other appropriate evidence of such payment is promptly provided to the relevant Ineligible Foreign Shareholder.
- (g) None of the Target, the Bidder or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares by the Sale Agent. The sale of New Bidder Shares under this clause 5.7 will be at the risk of the Ineligible Foreign Shareholder.
- (h) Each Ineligible Foreign Shareholder appoints the Target 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 Shareholders under the Corporations Act.

## **5.8 Status of New Bidder Shares**

Subject to this scheme becoming Effective, the Bidder must:

- (a) provide the New Bidder Shares required to be provided by it under this scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share; and
- (b) ensure that each such New Bidder Share is duly issued, fully paid and free from any Encumbrance.

## **5.9 Unclaimed monies**

- (a) The Bidder may cancel or procure cancellation of a cheque issued under clause 5.7(d)(i) if the cheque:
  - (i) is returned to the Bidder or the Sale Agent; or

- (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request from a Scheme Shareholder, the Bidder must reissue, or procure the reissue of, a cheque that was previously cancelled under this clause.

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## **6. Dealings in Target Shares**

### **6.1 Dealings in Target Shares by Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Target Shares will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Target Share Register is kept,

and the Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders, any transfer or transmission application in respect of the Target Shares received after such times or received prior to such times but not in registrable form.

### **6.2 Target Share Register**

- (a) The Target must maintain the Target Share Register in accordance with the provisions of this clause 6 until the Share Scheme Consideration has been provided to the Scheme Shareholders and the Target Share Register in this form will solely determine entitlements to the Share Scheme Consideration.
- (b) The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.1(b) on or before the Record Date (provided that for the avoidance of doubt nothing in this clause 6.2(b) requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a Marketable Parcel).
- (c) The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Shares received after the Record Date.
- (d) From the Record Date until the earlier of registration of the Bidder in respect of all Scheme Shares under clause 4.3(b) or the End Date, no Target Shareholder may deal with Target Shares in any way except as set out in this scheme and any attempt to do so will have no effect.

### **6.3 Information to be made available to the Bidder**

As soon as practicable after the Record Date and in any event at least 2 Business Days before the Implementation Date, the Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder are available to the Bidder in the form the Bidder reasonably requires.

## **6.4 Effect of share certificates and holding statements**

- (a) All certificates and statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of the Bidder and its successors in title).
- (b) As from the Record Date, each entry current at that date on the Target Share Register (other than entries in respect of the Bidder and its successors in title) will cease to have effect except as evidence of entitlement to the Share Scheme Consideration in respect of the Target Shares relating to that entry.

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## **7. Quotation of Target Shares**

- (a) The Target will apply to ASX to suspend trading on ASX in Target Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder, the Target will apply:
  - (i) for termination of the official quotation of Target Shares on ASX; and
  - (ii) to have itself removed from the official list of ASX.

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## **8. General scheme provisions**

### **8.1 Consent**

If the Court proposes to approve this scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing.

### **8.2 Agreement of Scheme Shareholders**

Each Scheme Shareholder:

- (a) agrees to the transfer of their Target Shares in accordance with terms of this scheme and agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this scheme;
- (b) acknowledges that this scheme binds the Target and all Scheme Shareholders (including those who do not attend the Share Scheme Meeting or do not vote at that meeting or vote against this scheme at that Share Scheme Meeting);
- (c) who is issued New Bidder Shares under this scheme agrees to become a shareholder of the Bidder in respect of those New Bidder Shares and to be bound by the constitution of the Bidder; and
- (d) who is an Ineligible Foreign Shareholder agrees and acknowledges that the payment to it of an amount in accordance with clause 5.7 constitutes the satisfaction in full of its entitlement to the Share Scheme Consideration.

### **8.3 Warranties by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to the Target in its own right and for the benefit of the Bidder that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this scheme will, on the date they are transferred to the Bidder, be fully paid;
- (b) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this scheme will, on the date they are transferred to the Bidder, be free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind; and
- (c) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to the Bidder.

### **8.4 Authority given to the Target**

Upon this scheme becoming Effective, each Scheme Shareholder without the need for any further act:

- (a) irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
  - (i) enforcing the Share Deed Poll against the Bidder; and
  - (ii) executing any document necessary to give effect to this scheme including, a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,and the Target accepts such appointment; and
- (b) will be deemed to have authorised the Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary to implement this scheme, including executing, as agent and attorney of each Scheme Shareholder, a share transfer or transfers in relation to Scheme Shares as contemplated by clause 8.4(a).

### **8.5 Appointment of sole proxy**

Upon the Share Scheme Consideration being provided to the Scheme Shareholders and until the Target registers the Bidder as the holder of all Target Shares in the Target Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed the Bidder as its attorney and agent (and directed the Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by the Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target Shareholders' resolutions, whether in person, by proxy or by corporate representative;



- (b) undertakes not to otherwise attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as pursuant to clause 8.5(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.5(a), the Bidder and any director, officer, secretary or agent nominated by the Bidder under clause 8.5(a) may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares.

## **8.6 Definition of "sending"**

For the purposes of clause 5.7(d)(i), the expression "sending" means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Record Date by any other means at no cost to the recipient.

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## **9. General**

### **9.1 Stamp duties**

The Bidder must pursuant to their obligations under the Share Deed Poll:

- (a) pay all stamp duties and any related fines and penalties in respect of the transfer of the Scheme Shares to the Bidder and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Shareholder against any liability from a failure to comply with clause 9.1(a).

### **9.2 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this scheme is sent by post to the Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the place where the Target's Share Registry is kept.
- (b) The accidental omission to give notice of the Share Scheme Meeting or the non-receipt of such a notice by any Target Shareholder may not, unless so ordered by the Court, invalidate the Share Scheme Meeting or the proceedings of the Share Scheme Meeting.

### **9.3 Further acts and documents**

The Target must do all further acts and execute and deliver all further documents required by law or necessary to give effect to this scheme and the transactions contemplated by it.

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## **10. Governing law and jurisdiction**

### **10.1 Governing law**

This scheme is governed by the law applying in Western Australia.

### **10.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this scheme; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.2(a).

## Annexure "B"

### Scheme of arrangement made under section 411 of the Corporations Act

**Parties**                    **Dominion Mining Ltd ABN 37 000 660 864** of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**)  
**Each person registered as a holder of options to acquire fully paid ordinary shares in the capital of the Target at the Option Record Date**

### Background

- A.            The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this scheme to Target Optionholders and each of the Target and the Bidder have agreed to take certain steps to give effect to this scheme.
- B.            If this scheme becomes Effective, the Bidder will provide or procure the provision of the Option Scheme Consideration to the Scheme Optionholders in accordance with the provisions of this scheme, and all of the Scheme Options will be cancelled.

### Operative provisions

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## 1.        **Definitions and interpretation**

### 1.1        **Definitions**

In this scheme:

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

**ASX** means, as the context requires, ASX Limited ABN 98 008 624 691 or the securities market conducted by ASX Limited.

**Bidder** means Kingsgate Consolidated Limited ABN 42 000 837 472 of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia.

**Bidder Share Register** means the register of members of the Bidder maintained by or on behalf of the Bidder in accordance with section 168(1) of the Corporations Act.

**Bidder Share Registry** means Security Transfer Registrars Pty Ltd, 770 Canning Highway, Applecross, Western Australia 6153, Australia.

**Bidder Shares** means fully paid ordinary shares in the capital of the Bidder.

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

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

**Court** means the Federal Court of Australia.

**Effective** means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this scheme.

**Effective Date** means the date on which this scheme becomes Effective.

**End Date** means the date 6 months after the date of the Implementation Agreement.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**Implementation Agreement** means the scheme implementation agreement dated 20 October 2010 between the Target and the Bidder.

**Implementation Date** means the date which is 5 Business Days after the Option Record Date or such other date as the Target and the Bidder agree in writing.

**Ineligible Foreign Optionholder** means a Scheme Optionholder whose address shown in the Target Option Register on the Option Record Date is a place outside Australia and its external territories unless the Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Optionholder with New Bidder Shares when this scheme becomes Effective.

**Listing Rules** means the official listing rules of ASX.

**New Bidder Share** means a fully paid ordinary shares in the capital of the Bidder to be provided to Scheme Optionholder under this scheme.

**Option Deed Poll** means the deed poll dated 15 December 2010 executed by the Bidder in favour of the Scheme Optionholders.

**Option Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date or such other time and date (after the Effective Date) as the Bidder and the Target agree in writing.

**Option Scheme Consideration** means the consideration payable to Scheme Optionholders as determined in accordance with Schedule 1.

**Option Scheme Meeting** means the meeting to be convened by the Court in relation to this scheme pursuant to section 411(1) of the Corporations Act.

**Registered Address** means, in relation to a Scheme Optionholder, the address of the Scheme Optionholder as recorded in the Target Option Register.

**Sale Agent** means a person appointed by the Bidder to sell or procure the sale or sales of the New Bidder Shares that are attributable to Ineligible Foreign Optionholders under this scheme.

**Scheme Option** means a Target Option on issue on the Option Record Date.

**Scheme Optionholder** means each person who holds Scheme Options.

**Scheme Share** means a Target Share on issue on the Share Record Date.

**Scheme Shareholder** means each person who holds Scheme Shares.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this scheme or, if

the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Share Record Date** means the "Record Date" as defined in the Share Scheme.

**Share Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders, the form of which is set out in the Share Explanatory Memorandum (as defined in the Implementation Agreement), subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

**Share Scheme Consideration** means 0.31 New Bidder Shares for each Scheme Share.

**Target Director** means a director of the Target.

**Target Option Register** means the register of option holders of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Optionholder** means a person who is registered in the Target Option Register as a holder of Target Options.

**Target Options** means an option to acquire one unissued Target Share issued under the Dominion Employee Share Option Plan or the Long Term Incentive Plan.

**Target Shares** means fully paid ordinary shares in the capital of the Target.

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Registries Limited of Level 7, 207 Kent Street, Sydney, New South Wales 2000, Australia.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

## 1.2 Business Days

If the day on which any act to be done under this scheme is a day other than a Business Day, that act must be done on or by the next Business Day except where this scheme expressly specifies otherwise.

## 1.3 Listing rules are law

A listing rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this scheme.

## 1.4 General rules of interpretation

In this scheme headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;

- (c) 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;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this scheme, and a reference to this scheme includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) a reference to time is to Sydney, Australia time; and
- (l) this scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## 2. Preliminary matters

### 2.1 Target

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Target is admitted to the official list of ASX and Target Shares are officially quoted on ASX. As at 15 December 2010, the Target had the following securities on issue:
  - (i) 103,520,259 Target Shares;
  - (ii) 7,191,000 Target Options; and
  - (iii) 500,000 Target performance rights.

## **2.2 Bidder**

- (a) The Bidder is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Bidder is admitted to the official list of ASX and Bidder Shares are officially quoted on ASX.

## **2.3 Implementation Agreement**

The Bidder and the Target have agreed, by executing the Implementation Agreement, to implement this scheme.

## **2.4 Option Deed Poll**

The Bidder has agreed, by executing the Option Deed Poll, to perform its obligations under this scheme, including the obligation to provide or procure the provision of the Option Scheme Consideration to the Scheme Optionholders.

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## **3. Conditions precedent**

### **3.1 Conditions**

- (a) This scheme is conditional on:
  - (i) all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) having been satisfied or waived in accordance with the terms of the Implementation Agreement by 8.00 am on the Second Court Date;
  - (ii) the Implementation Agreement not having been terminated in accordance with its terms before 8.00 am on the Second Court Date;
  - (iii) approval of this scheme by the Court under section 411(4)(b) of the Corporations Act, including with such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder, having been satisfied;
  - (iv) the orders of the Court made under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act approving this scheme coming into effect, under section 411(10) of the Corporations Act; and
  - (v) the condition in clause 3.1(m) of the Implementation Agreement having been satisfied in accordance with the terms of the Implementation Agreement.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) is a condition precedent to the operation of clauses 4.3 and 5.
- (c) This scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

### **3.2 Certificate in relation to conditions**

The Target and the Bidder must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming whether or not as at 8.00 am on the Second Court Date all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) have been satisfied or waived.

### **3.3 Conclusive evidence**

The giving of a certificate by the Target and the Bidder under clause 3.2 will be conclusive evidence of the matters referred to in the certificate.

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## **4. Implementation**

### **4.1 Lodgement of Court orders**

The Target must lodge with ASIC an office copy of any Court orders under section 411(10) of the Corporations Act approving this scheme by 5.00 pm on the first Business Day following the date on which the Court approves this scheme or by 5.00 pm on the first Business Day following the date on which the Court orders are entered, whichever is later (or such other date as the Target and Bidder agree).

### **4.2 Consequences of this scheme becoming Effective**

If this scheme becomes Effective:

- (a) it will override the constitution of the Target, to the extent of any inconsistency;
- (b) the Bidder must (pursuant to its obligations under the Option Deed Poll) provide or procure the provision of the Option Scheme Consideration in the manner contemplated by clause 5.3; and
- (c) subject to the provision of the Option Scheme Consideration under clause 4.2(b), all the Scheme Options (together with all rights, entitlements and obligations attaching to the Scheme Options) will be cancelled.

### **4.3 Cancellation of Scheme Options**

On the Implementation Date, subject to the provision of the Option Scheme Consideration in the manner contemplated by clause 5.3 and the Bidder providing the Target with written confirmation of that provision, all of the Scheme Options, together with all rights, entitlements and obligations attaching to them as at the Implementation Date, will be cancelled and extinguished, without the need for any further act by any Scheme Optionholder, and the Scheme Optionholder:

- (a) releases the Target from all obligations in relation to those Scheme Options;
- (b) release and waives any and all rights the Scheme Optionholder may have had (including to be issued Target Shares) in relation to those Scheme Options; and
- (c) authorises the Target to update the Target Option Register recording the cancellation of the Target Options that constitute the Scheme Options.



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## **5. Option Scheme Consideration**

### **5.1 Amount of Option Scheme Consideration**

Each Scheme Optionholder is entitled to receive the Option Scheme Consideration in respect of each Scheme Option held by that Scheme Optionholder.

### **5.2 Fractional entitlement**

If the number of Scheme Options held by a Scheme Optionholder is such that an entitlement of that Scheme Optionholder to New Bidder Shares is not a whole number then any fractional entitlement will:

- (a) where the entitlement is to half a New Bidder Share or more, be rounded up to the nearest whole number of New Bidder Shares; and
- (b) where the entitlement is to less than half a New Bidder Share, be rounded down to the nearest whole number of New Bidder Shares.

### **5.3 Provision of Option Scheme Consideration**

Subject to clauses 5.3(c), 5.4 and 5.5, the obligation of the Bidder to provide the Option Scheme Consideration to Scheme Optionholders will be satisfied by the Bidder:

- (a) in the case of Option Scheme Consideration that is required to be provided to Scheme Optionholders, by the Bidder procuring that:
  - (i) the name and address of each such Scheme Optionholder is entered into the Bidder Share Register on the Implementation Date in respect of the New Bidder Shares to which the Scheme Optionholder is entitled under this clause 5; and
  - (ii) a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Optionholder representing or stating, as applicable, the number of New Bidder Shares to be provided to the Scheme Optionholder pursuant to this scheme;
- (b) in the case of Option Scheme Consideration that is required to be provided to the Sale Agent as a result of the operation of clause 5.4, by the Bidder procuring that:
  - (i) the name and registered address of the Sale Agent, as nominee, is entered into the Bidder Register on the Implementation Date in respect of the New Bidder Shares required to be provided to the Sale Agent under this clause 5;
  - (ii) a share certificate or holding statement (or equivalent document) in the name of the Sale Agent is sent to the Sale Agent representing or stating, as applicable, the number of New Bidder Shares so provided to the Sale Agent; and
  - (iii) the Sale Agent, as nominee, sells or procures the sale or sales of those New Bidder Shares, and pays or procures the payment of the proceeds in accordance with clause 5.5; and

- (c) in the case of joint holders of Scheme Options:
- (i) New Bidder Shares to be provided under this scheme will be provided to and registered in the names of the joint holders (or the Sale Agent, as applicable);
  - (ii) any cheque required to be sent under clause 5.5 will be made payable to the joint holders and sent to the holder whose name appears first in the Target Option Register on the Record Date; and
  - (iii) any other document required to be sent under this clause 5 must be forwarded to the holder whose name appears first in the Target Option Register on the Record Date

#### 5.4 Ineligible Foreign Optionholders

The Bidder has no obligation to provide, and will not provide, any New Bidder Shares to any Ineligible Foreign Optionholders under this scheme and, instead, must procure that those New Bidder Shares which, but for this clause 5.4, would be required to be provided to Ineligible Foreign Optionholders are dealt with on behalf of the Ineligible Foreign Optionholders in accordance with clause 5.5.

#### 5.5 Sale Agent

- (a) New Bidder Shares that are required to be dealt with under this clause by virtue of clause 5.4 must be provided by the Bidder to the Sale Agent, as nominee, on the Implementation Date and subsequently sold in accordance with the remaining provisions of this clause 5.5.
- (b) The Bidder must procure that the Sale Agent:
  - (i) as soon as practicable after the Implementation Date, sells or procures the sale or sales of the New Bidder Shares provided to it pursuant to clause 5.5(a), in the ordinary course of trading on ASX; and
  - (ii) remits to the Bidder the proceeds of sale (or procures such remittance) (**Option Proceeds**).
- (c) Promptly after receiving the entire Option Proceeds in accordance with clause 5.5(b)(ii), the Bidder must pay, or procure the payment, to each Ineligible Foreign Optionholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where:

- B = the number of New Bidder Shares that would have been provided to that Ineligible Foreign Optionholder had it not been an Ineligible Foreign Optionholder;
- C = the total number of New Bidder Shares which would otherwise have been provided to all Ineligible Foreign Optionholders collectively and which were instead provided to the Sale Agent; and
- D = the Option Proceeds.

- (d) The Bidder must make payments, or must procure that payments are made, to Ineligible Foreign Optionholders under clause 5.5(c) by:
- (i) sending (or procuring the Bidder Share Registry to send) it to the Ineligible Foreign Optionholder's Registered Address by cheque in Australian currency; or
  - (ii) if the Ineligible Foreign Optionholder has a payment direction (that is currently used for the payment of dividends) for a bank account with any Australian ADI (as defined in the Corporations Act) recorded in the Target Option Register as at the Option Record Date, depositing (or procuring the Bidder Option Registry to deposit) it into that account.
- (e) Payment of an amount to an Ineligible Foreign Optionholder under this clause 5.5 will be in full satisfaction of the obligations of the Bidder to the Ineligible Foreign Optionholder under this scheme in respect of that Ineligible Foreign Optionholder's Option Scheme Consideration.
- (f) If the Bidder receives professional advice that any Tax is required by law to be withheld from any such payment, the Bidder must ensure, or must procure, that the relevant amount is withheld before making the payment to the Ineligible Foreign Optionholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this scheme). The Bidder must ensure, or must procure, that any amount so withheld is paid to the relevant taxation authorities within the time permitted by law, and that a receipt or other appropriate evidence of such payment is promptly provided to the relevant Ineligible Foreign Optionholder.
- (g) None of the Target, the Bidder or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares by the Sale Agent. The sale of New Bidder Shares under this clause 5.5 will be at the risk of the Ineligible Foreign Optionholder.
- (h) Each Ineligible Foreign Optionholder appoints the Target 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 Optionholder under the Corporations Act.

## **5.6 Status of New Bidder Shares**

Subject to this scheme becoming Effective, the Bidder must:

- (a) provide the New Bidder Shares required to be provided by it under this scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share; and
- (b) ensure that each such New Bidder Share is duly issued, fully paid and free from any Encumbrance.

## **5.7 Unclaimed monies**

- (a) The Bidder may cancel or procure cancellation of a cheque issued under clause 5.5(d)(i) if the cheque:
  - (i) is returned to the Bidder or the Sale Agent; or

- (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request from a Scheme Optionholder, the Bidder must reissue, or procure the reissue of, a cheque that was previously cancelled under this clause.

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## **6. Dealings in Target Options**

### **6.1 Dealings in Target Options by Scheme Optionholders**

To establish the identity of the Scheme Optionholders:

- (a) the Target will not accept as valid, nor recognise for any purpose, any notice of exercise of a Target Option registered in the name of a Target Optionholder:
  - (i) (if the Share Record Date is a date before, or is the same date as, the Option Record Date) received after 5.00 pm on the day which is the Business Day immediately before the Share Record Date;
  - (ii) (if the Share Record Date is a date after the Option Record Date) received after 5.00 pm on the day which is the Business Day immediately before the Option Record Date; or
  - (iii) which is not in accordance with the terms of grant of the Target Options.
- (b) dealings in Target Options will only be recognised if registrable transmission applications or transfers in respect of those dealings are received on or before the Option Record Date at the place where the Target Option Register is kept; and the Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Optionholders, any transfer or transmission application in respect of the Target Options received after such times or received prior to such times but not in registrable form.

### **6.2 Registration as holder of Target Shares**

- (a) The Target must register, on or before the Share Record Date, the Target Optionholder as the holder of a Target Share (and must issue such share) in respect of the exercise of each Target Option registered in the name of that Target Optionholder pursuant to any notice of exercise given in accordance with the terms of grant of those Target Options and which is given on or before 5.00 pm on the day contemplated by clauses 6.1(a)(i) or (ii) as applicable, and must remove those Target Options from the Target Option Register prior to the Option Record Date.
- (b) The Target Optionholder referred to in clause 6.2(a) acknowledges and agrees that, if the Share Scheme becomes Effective, that Target Optionholder will be bound by the terms of the Share Scheme in respect of each Target Share referred to in clause 6.2(a) and, accordingly, each such Target Share will be transferred to the Bidder in accordance with the Share Scheme.

### **6.3 Target Option Register**

- (a) The Target must maintain the Target Option Register in accordance with the provisions of this clause 6 until the Option Scheme Consideration has been

provided to the Scheme Optionholders and the Target Option Register in this form will solely determine entitlements to the Option Scheme Consideration.

- (b) The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.1 on or before the Option Record Date.
- (c) The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Options received after the Option Record Date.
- (d) From the Option Record Date until cancellation of the Scheme Options under clause 4.3 or the End Date, no Target Optionholder may deal with Target Options in any way except as set out in this scheme and any attempt to do so will have no effect.

#### **6.4 Information to be made available to the Bidder**

As soon as practicable after the Option Record Date and in any event at least 2 Business Days before the Implementation Date, the Target will ensure that details of the names, Registered Addresses and holdings of Target Options for each Scheme Optionholder are available to the Bidder in the form the Bidder reasonably requires.

#### **6.5 Effect of certificates and holding statements**

- (a) All certificates or statements of holding for Target Options will cease to have effect from the Option Record Date as documents of title in respect of those options.
- (b) As from the Option Record Date, each entry current at that date on the Target Option Register will cease to have effect except as evidence of entitlement to the Option Scheme Consideration in respect of the Target Options relating to that entry.

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### **7. General scheme provisions**

#### **7.1 Consent**

If the Court proposes to approve this scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing.

#### **7.2 Agreement of Scheme Optionholders**

Each Scheme Optionholder:

- (a) agrees to the cancellation of their Target Options in accordance with terms of this scheme and agrees to the variation, cancellation or modification of the rights attached to their Target Options constituted by or resulting from this scheme; and
- (b) acknowledges that this scheme binds the Target and all Scheme Optionholders (including those who do not attend the Option Scheme Meeting or do not vote at that meeting or vote against this scheme at that Option Scheme Meeting);

- (c) who is issued New Bidder Shares under this scheme agrees to become a shareholder of the Bidder in respect of those New Bidder Shares and to be bound by the constitution of the Bidder; and
- (d) who is an Ineligible Foreign Optionholder agrees and acknowledges that the payment to it of an amount in accordance with clause 5.5 constitutes the satisfaction in full of its entitlement to the Option Scheme Consideration.

### **7.3 Warranties by Scheme Optionholders**

Each Scheme Optionholder is deemed to have warranted to the Target in its own right and for the benefit of the Bidder that:

- (a) all their Scheme Options (including any rights and entitlements attaching to those Scheme Options) which are cancelled under this scheme will, on the date they are cancelled, be free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind; and
- (b) subject only to the relevant option terms, they have full power and capacity to deal with their Scheme Options (including any rights and entitlements attaching to those Scheme Options).

### **7.4 Authority given to the Target**

Upon this scheme becoming Effective, each Scheme Optionholder without the need for any further act:

- (a) irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
  - (i) enforcing the Option Deed Poll against the Bidder or the Bidder (as applicable); and
  - (ii) executing any document necessary to give effect to this scheme,and the Target accepts such appointment; and
- (b) will be deemed to have authorised the Target to do and execute all acts, matters, things and documents on the part of each Scheme Optionholder necessary to implement this scheme.

### **7.5 Definition of "sending"**

For the purposes of clause 5.5(d)(i), the expression "sending" means, in relation to each Scheme Optionholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Optionholder as at the Option Record Date; or
- (b) delivery to the Registered Address of that Scheme Optionholder as at the Option Record Date by any other means at no cost to the recipient.

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## **8. General**

### **8.1 Stamp duties**

The Bidder must pursuant to their obligations under the Option Deed Poll:

- (a) pay all stamp duties and any related fines and penalties in respect of the cancellation of the Scheme Options and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Optionholder against any liability from a failure to comply with clause 8.1(a).

### **8.2 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this scheme is sent by post to the Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the place where the Target's Option Registry is kept.
- (b) The accidental omission to give notice of the Option Scheme Meeting or the non-receipt of such a notice by any Target Optionholder may not, unless so ordered by the Court, invalidate the Option Scheme Meeting or the proceedings of the Option Scheme Meeting.

### **8.3 Further acts and documents**

The Target must do all further acts and execute and deliver all further documents required by law or necessary to give effect to this scheme and the transactions contemplated by it.

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## **9. Governing law and jurisdiction**

### **9.1 Governing law**

This scheme is governed by 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, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this scheme; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.2(a).

## Schedule 1 Option Scheme Consideration

The Option Scheme Consideration will be calculated as follows:

1. Option Scheme Consideration will be in the form of New Bidder Shares with the number offered set by reference to the Share Scheme Consideration of 0.31 New Bidder Shares per Target Share.
2. The number of New Bidder Shares to be provided for each Scheme Option will be calculated according to the following formula (regardless of whether the Scheme Option has a strike price above, below or equal to the Share Scheme Consideration):

$$N = A \div B$$

where:

N = New Bidder Shares per Scheme Option;

A = the Australian dollar value of the Scheme Option according to the Black Scholes option pricing formula. For the Black Scholes formula:

- (i) the valuation date must be 20 October 2010;
- (ii) the annualised volatility assumption will be set at 50%; and
- (iii) the spot price of Target Shares will be the implied Australian dollar value of the Share Scheme Consideration on 20 October 2010, where the value of Bidder Shares used to determine the implied value of the Share Scheme Consideration is to be the volume weighted average price of Bidder Shares on ASX for the 5 full trading days preceding 20 October 2010; and

B = the volume weighted average price of Bidder Shares on ASX for the 5 full trading days preceding 20 October 2010.

