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7 October 2011

Souls Private Equity Limited enters into Scheme Implementation Agreement with Washington H. Soul Pattinson and Company Limited

- Scheme consideration of \$0.163 per share and \$0.01 per option
- Cash or Scrip alternative for Australian and New Zealand shareholders
- The proposal represents a premium of 150.8% to SPEL's closing share price of \$0.065 and a premium of 66.7% to the closing option price of \$0.006 on Friday 16 September 2011 (being the last day of trading before the proposal was announced)
- Unanimous recommendation by Independent Directors subject to a superior proposal and an Independent Expert concluding that the Schemes are fair and reasonable and in the best interest of security holders
- Subject to certain limited conditions

Souls Private Equity Limited (ASX: SOE) ("SPEL") announces that it has entered into a Scheme Implementation Agreement with Washington H. Soul Pattinson and Company Limited (ASX: SOL) ("WHSP") under which it is proposed that WHSP will acquire all of the outstanding shares and cancel the options in SPEL (which it does not currently own) under two separate Schemes of Arrangement ("the Schemes").

Under the terms of the Schemes, shareholders will receive \$0.163 per share and option holders will receive \$0.01 per option valuing SPEL at approximately \$97.5 million.

Independent Directors' Recommendation

SPEL's Independent Directors unanimously recommend that SPEL security holders vote in favour of the Schemes in the absence of a superior offer and subject to the Independent Expert concluding that the Schemes are fair and reasonable and in the best interests of security holders.

The board of SPEL has appointed KPMG Corporate Finance (Aust) Pty Ltd to prepare the Independent Expert's Report. A copy of the IER will be included in the Scheme Booklet to be sent to security holders in due course.

Scheme Implementation Agreement

A copy of the executed Scheme Implementation Agreement is attached to this announcement. The Schemes are subject to a limited number of conditions including security holder approval, Court approval, no material adverse consequences to either party, no prescribed occurrences by either party, the Independent Expert concluding that the Schemes are fair and reasonable and in the best interests of security holders, relevant regulatory approvals and a market fall clause.

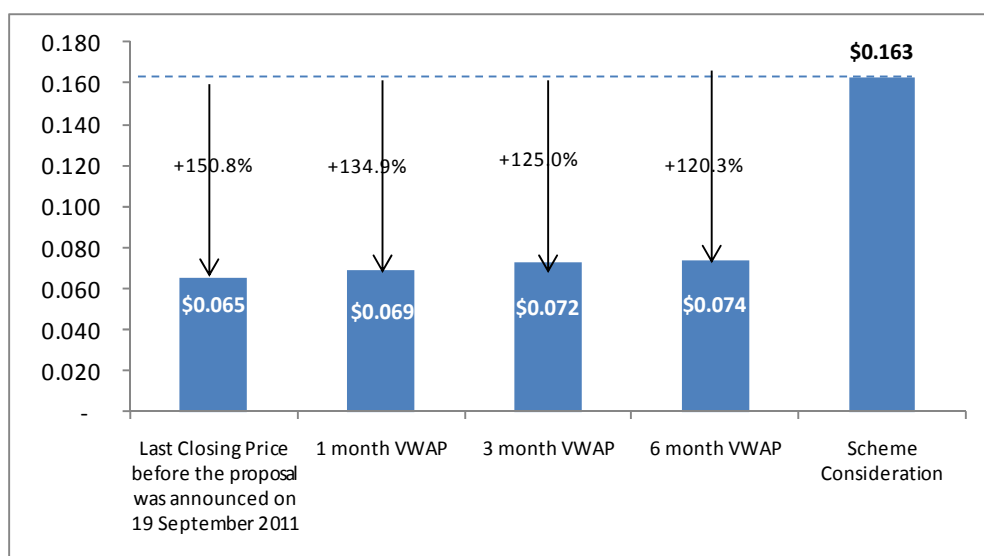
Timetable for the Schemes

A Scheme booklet containing information relating to the Schemes, details of both Scheme meetings, the reason for the Independent Directors' unanimous recommendation, a copy of the Independent Expert's Report and notices convening the Scheme meetings are expected to be sent to security holders in November 2011. The Scheme meetings are expected to be held in December.

Key Metrics

The proposed share consideration represents:

- a premium of 150.8% to the closing price of \$0.065 per SPEL share on 16 September 2011, being the last trading day before the proposal was announced;
- a premium of 134.9% to the one month volume weighted average price ("VWAP") of \$0.069 per SPEL share up to and including 16 September 2011;
- a premium of 125.0% to the three month VWAP of \$0.072 per SPEL share up to and including 16 September 2011; and
- a premium of 120.3% to the six month VWAP of \$0.074 per SPEL share up to and including 16 September 2011.



For further information contact:

Robert Millner, Chairman
Souls Private Equity Limited
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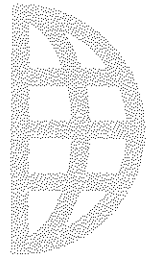
Scheme Implementation Agreement

Souls Private Equity Limited

**Washington H. Soul Pattinson and Company
Limited**

Baker & McKenzie

Solicitors
Level 27, AMP Centre
50 Bridge Street
SYDNEY NSW 2000
Tel: (02) 9225-0200
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Date 7 October 2011

Parties **Souls Private Equity Limited** (ABN 71 111 196 420) of Level 2, 160 Pitt Street Mall, Sydney NSW 2000 (*SOE*)

Washington H. Soul Pattinson and Company Limited (ABN 49 000 002 728) of Level 1, 160 Pitt Street Mall, Sydney NSW 2000 (*Bidder*)

Recitals

- A Bidder wishes to acquire all of the fully paid ordinary shares of SOE, together with the cancellation of all options to subscribe for ordinary shares in SOE, by means of separate schemes of arrangement under Part 5.1 of the *Corporations Act*.
- B SOE and Bidder propose to implement the Scheme and Option Scheme on the terms and conditions of this Agreement.
- C SOE and Bidder have agreed certain other matters in connection with the implementation of the Scheme and Option Scheme as set out in this Agreement.

Operative provisions

1 Definitions and interpretation

Definitions

1.1 In this Agreement, unless the context otherwise requires:

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

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

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

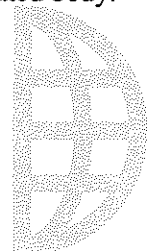
AIFRS means the International Financial Reporting Standards as adopted in Australia.

ASIC means the Australian Securities and Investments Commission.

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

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

Bidder Group means Bidder and each of its Subsidiaries.

Bidder Indemnified Party means each member of the Bidder Group and their respective Representatives.

Bidder Material Adverse Change means one or more occurrences or any fact, matter or circumstance (whenever occurring) that is announced or becomes known to SOE that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has had or is reasonably likely to have one of the following effects:

- (a) to materially adversely affect the status or terms of any Regulatory Consent that is applicable to the Bidder Group; or
- (b) to prevent or would be likely to prevent Bidder from materially discharging its obligations under this Agreement,

unless that occurrence, fact, matter or circumstance:

- (a) was publicly announced by Bidder or otherwise Fairly Disclosed in publicly available filings by Bidder or any of its Subsidiaries at least two Business Days prior to the date of this Agreement; or
- (b) comprises a change in applicable law after the date of this Agreement; or
- (c) is required to be undertaken by Bidder or its Subsidiary (as the case may be) in connection with the Scheme or this Agreement, or Bidder or its Subsidiary (as the case may be) otherwise elects (acting reasonably) to undertake an action or event in connection with the Scheme or this Agreement.

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

- (a) Bidder or any of its Subsidiaries resolving that it be wound up;
- (b) a liquidator, provisional liquidator or administrator of Bidder or any of its Subsidiaries being appointed;
- (c) the making of an order by a court for the winding up of Bidder or any of its Subsidiaries;
- (d) Bidder or any of its Subsidiaries executing a deed of company arrangement; or
- (e) a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of Bidder or any of its Subsidiaries being appointed,

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

Bidder Scheme Information means information about Bidder which is provided to SOE by or on behalf of Bidder to enable the Scheme Booklet to be prepared in accordance with all applicable laws, applicable ASIC guidance and policies and the Listing Rules, or to the Independent Expert to enable it to prepare its report, including information regarding the arrangements Bidder has in place to fund the Scheme Consideration and Option Scheme

Consideration and Bidder's intentions with respect to the assets, business and employees of SOE if the Scheme is implemented.

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

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

Cash Consideration means a cash amount of \$0.163 per Scheme Share.

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

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

- (a) to consider or enter into any transaction which, if ultimately completed, will have the result that any person or two or more persons who are Associates (other than Bidder or its Associates) will, or would reasonably be expected to, acquire voting power in 50% or more of SOE Shares, including by way of a takeover bid, scheme of arrangement, amalgamation, merger, capital reconstruction, consolidation, shareholder-approved SOE Share acquisition or issuance, share buy-back or repurchase, reverse takeover, establishment of a new holding entity for SOE or any other transaction or arrangement with SOE;
- (b) to acquire, have a right to acquire or obtain an economic interest in (whether directly or indirectly) all or a substantial part of the assets or business of the SOE Group; or
- (c) to form a dual listed company structure, stapled security structure or other form of synthetic merger having the same or substantially the same effect as a takeover bid for, or scheme of arrangement or merger in respect of, SOE.

Completion means completion of the implementation of the Scheme or Option Scheme (as the context requires) on the Implementation Date.

Condition means a condition to the Scheme set out in clause 3.1 and/or a condition to the Option Scheme set out in clause 3.2 (as the context requires).

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

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

Deed Poll means the deed poll to be executed by Bidder substantially in the form of Annexure 3 under which Bidder covenants in favour of SOE Shareholders to perform its obligations under this Agreement and the Scheme.

Dispatch Date means the day that the Scheme Booklet is dispatched to SOE Shareholders and Optionholders.

Draft Scheme means the document set out in Annexure 2, which is the proposed Scheme under which all of the Scheme Shares will be acquired by Bidder on the Implementation Date.

Draft Option Scheme means the document set out in Annexure 4, which is the proposed Option Scheme under which all of the Scheme Options will be cancelled on the Implementation Date.

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

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

Election means a valid election made by a SOE Shareholder pursuant to clause 1.1 of Annexure 7 and in accordance with clause 1.2 of Annexure 7.

Election Date means 7.00 pm on the fifth Business Day following the Effective Date, or such earlier date as the parties may agree in writing.

Election Form means the form accompanying the Scheme Booklet pursuant to which SOE Shareholders (other than Ineligible Foreign Shareholders) may elect the form of Scheme Consideration they wish to receive in consideration for the transfer of their Scheme Shares.

Fairly Disclosed means disclosed in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Representatives) experienced in transactions similar to the Scheme and experienced in a business similar to any business conducted by the SOE Group, to identify the nature and scope of the relevant matter, event or circumstance.

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

Government Agency means a:

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

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

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

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

Implementation means the implementation of the Scheme or Option Scheme (as the context requires), following it becoming Effective under section 411(10) of the Corporations Act.

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

Independent Expert means an expert independent of the parties engaged by SOE to opine (and prepare a report for inclusion in the Scheme Booklet) on whether each of the Scheme and

Option Scheme is fair and reasonable, and in the best interests of SOE Shareholders and Optionholders (respectively).

Ineligible Foreign Shareholder means a Scheme Shareholder whose address as shown in the Register as at the Scheme Record Date is a place outside Australia and its external territories and New Zealand.

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

New WHSP Share means the new WHSP Shares to be issued under the Scheme as Scheme Consideration.

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

Option means an option to subscribe for a SOE Share.

Optionholder means each person who is registered in the Option Register as a holder of an Option.

Optionholder Approval means a resolution by Optionholders in favour of the Option Scheme passed by the majorities required under section 411(4)(a)(i) of the Corporations Act.

Options Register means the register of holders of Options.

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

Option Scheme Consideration means \$0.01 in respect of each Scheme Option.

Option Scheme Deed Poll means a deed poll to be executed by Bidder substantially in the form of Annexure 5 under which Bidder covenants in favour of the Optionholders to perform its obligations under this Agreement and the Option Scheme.

Option Scheme Meeting means the meeting of Optionholders order by the Court to be convened under section 411(1) of the Corporations Act.

Recommendation means:

- (a) in respect of the Scheme, the recommendation of the SOE Independent Directors to SOE Shareholders to vote in favour of the Scheme in the form described in clause 6.1(a)(i)(E) of this Agreement; and
- (b) in respect of the Option Scheme, the recommendation of the SOE Independent Directors to SOE Optionholders to vote in favour of the Option Scheme in the form described in clause 6.1(a)(i)(E) of this Agreement.

Register means the register of shareholders of SOE.

Registry means Advanced Share Registry Limited (ABN 48 078 279 277).

Regulatory Consents has the meaning given to that term in clause 3.1(f).

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

Representative means, in relation to an entity:

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

Scheme means the members scheme of arrangement, substantially in the form set out in Annexure 2, under Part 5.1 of the Corporations Act between SOE and SOE Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by SOE and Bidder.

Scheme Booklet means in respect of the Scheme and Option Scheme, the document including the information described in clause 6.1(a) to be approved by the Court and dispatched to SOE Shareholders and Optionholders.

Scheme Consideration means the Cash Consideration and Scrip Consideration to be provided by Bidder in consideration for the transfer of the Scheme Shares held by Scheme Shareholders to Bidder, as described in Annexure 7.

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

Scheme Option means each Option on issue on the Scheme Record Date.

Scheme Optionholder means each person who holds Scheme Options (other than any WHSP Group Member).

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

Scheme Share means a SOE Share as at the Scheme Record Date.

Scheme Shareholder means each person who holds Scheme Shares (other than any WHSP Group Member).

Scrip Consideration means that fraction of a WHSP Share which (calculated using the WHSP VWAP) is equal to the amount of \$0.163.

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

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

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

SOE Confidential Information means any of the business, commercial, financial or technical information of the SOE Group disclosed or otherwise supplied by or on behalf of any such entities to Bidder or any of its Representatives, and in whatever form or medium and includes notes, records and copies made by Bidder or any of its Representatives of such information but excludes:

- (a) information which is in the public domain (other than as a result of a breach of this Agreement); and
- (b) the SOE Scheme Information.

SOE Group means SOE and each of its Subsidiaries.

SOE Indemnified Party means each member of the SOE Group and their respective Representatives.

SOE Independent Directors means Mr. Graeme Crampton and Mr Ross Strang.

SOE Material Adverse Change means one or more occurrences or any fact, matter or circumstance (whenever occurring) that is announced or becomes known to Bidder that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has prevented or is reasonably likely to prevent SOE from materially discharging its obligations under this Agreement, unless that occurrence, fact, matter or circumstance:

- (a) was Fairly Disclosed to the Bidder on or before the date of this Agreement;
- (b) was publicly announced by SOE or otherwise Fairly Disclosed in publicly available filings by SOE or any of its Subsidiaries on or before the date of this Agreement;
- (c) comprises a change in applicable law after the date of this Agreement; or
- (d) is required to be undertaken by SOE or its Subsidiary (as the case may be) in connection with the Scheme, the Option Scheme or this Agreement, or SOE or its Subsidiary (as the case may be) otherwise elects (acting reasonably) to undertake an action or event in connection with the Scheme, the Option Scheme or this Agreement.

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

- (a) SOE or any of its Subsidiaries converting all or any of its shares into a larger or smaller number of shares;
- (b) SOE or any of its Subsidiaries resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) SOE or any of its Subsidiaries entering into a buy-back agreement, or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) SOE declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (e) SOE or any of its Subsidiaries issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option (other than pursuant to the existing Options);
- (f) SOE or any of its Subsidiaries issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) SOE or any of its Subsidiaries disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (h) other than in the ordinary course of business and consistent with past practice, SOE or any of its Subsidiaries creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property;
- (i) SOE or any of its Subsidiaries resolving that it be wound up;
- (j) a liquidator, provisional liquidator or administrator of SOE or any of its Subsidiaries being appointed;

- (k) the making of an order by a court for the winding up of SOE or any of its Subsidiaries;
- (l) SOE or any of its Subsidiaries executing a deed of company arrangement;
- (m) a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of SOE or any of its Subsidiaries being appointed;
- (n) SOE or any of its Subsidiaries making any material change or amendment to its constitution; or
- (o) SOE or any of its Subsidiaries making any change to their accounting practices or policies, other than to comply with generally accepted Australian accounting standards or AIFRS,

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

- (a) SOE has first consulted, in reasonable detail, with Bidder in relation to the proposed event, and Bidder has approved in writing the proposed event;
- (b) the event was Fairly Disclosed to the Bidder on or before the date of this Agreement;
- (c) the event was publicly announced by SOE or otherwise Fairly Disclosed in publicly available filings by SOE or any of its Subsidiaries on or before the date of this Agreement;
- (d) SOE or its Subsidiary (as the case may be) is required to undertake (or otherwise elects (acting reasonably) to undertake) the action or event in connection with:
 - (i) the Scheme;
 - (ii) the Option Scheme;
 - (iii) this Agreement.

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

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

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

SOE Shareholder Approval means a resolution by SOE Shareholders in favour of the Scheme passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act or, in the circumstances contemplated by clause 3.5, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act.

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

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

Sunset Date means:

- (a) 5.00 pm on 6 April 2012 or, if clause 6.4 applies, 6 July 2012 (or any earlier date agreed between SOE and Bidder in accordance with clause 6.4(b)); or
- (b) such other date and time agreed in writing between SOE and Bidder.

Superior Proposal means a Competing Proposal which the SOE Independent Directors in good faith determine is, or is reasonably likely to result in, a proposal by the person making the Competing Proposal that is more favourable to SOE Shareholders than the Scheme, taking into account all terms and conditions of the Competing Proposal.

Timetable means the indicative timetable set out in Annexure 1.

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

WHSP Group Member means Bidder and each of its Related Bodies Corporate.

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

WHSP VWAP means the volume weighted average share price for WHSP Shares traded on ASX (excluding any and all special crossings, crossings made prior to the commencement of normal trading, crossings made during the closing phase or the after hours adjust phase, overseas trades and overnight crossings or trades pursuant to the exercise of options over WHSP Shares, and any other trades which SOE and Bidder agree (acting reasonably) to exclude on the basis that they are not representative of the general price at which WHSP Shares are trading on ASX in the context of trading in WHSP Shares on any day on which the trades took place) over the 10 consecutive Trading Days (as defined in the Listing Rules) immediately preceding the date of the Scheme Meeting (calculated to 2 decimal places).

Interpretation

1.2 In this Agreement:

- (a) unless the context requires another meaning, a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
 - (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) to a party means a party to this Agreement;
 - (vi) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this Agreement;
 - (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
 - (viii) to a person (including a party) includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency;
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and

- (C) a reference to the representative member of the GST group to which the person belongs to the extent that the representative member has assumed rights, entitlements, benefits, obligations and liabilities which would remain with the person if the person were not a member of a GST group;
- (ix) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (x) to proceedings includes litigation, arbitration and investigation;
- (xi) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (xii) to time is to prevailing Sydney, NSW time; and
- (xiii) to \$ means the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) headings are for convenience only and do not affect interpretation of this Agreement;
- (e) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (f) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

Construction

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

Payments

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

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

Best and reasonable endeavours

- 1.5 Any provision of this Agreement which requires a party to use best endeavours, or reasonable endeavours, or to take all steps reasonably necessary or desirable, (including to procure that something is performed or occurs) does not include an obligation:
- (a) to pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Agency or fees to any professional advisers; or
 - (b) to commence any legal proceeding against any person, except in accordance with the express terms of this Agreement.

2 Agreement to propose Scheme and Option Scheme

- 2.1 SOE will propose and seek to implement the Scheme and Option Scheme in accordance with this Agreement and the Corporations Act.
- 2.2 Bidder will comply with its obligations under:
- (a) the Scheme;
 - (b) the Option Scheme;
 - (c) the Deed Poll;
 - (d) the Option Scheme Deed Poll; and
 - (e) this Agreement,
- and will provide reasonable assistance to SOE in proposing and implementing the Scheme and Option Scheme in accordance with this Agreement.

3 Conditions

Conditions

- 3.1 The obligations of SOE under clause 6.1(r) and of Bidder under clause 6.2(k) will not become binding and the Scheme will not take place until each of the following Conditions is satisfied or waived in accordance with clauses 3.6 to 3.12:
- (a) ***(Orders convening Scheme Meeting)*** The Court orders the convening of the Scheme Meeting under section 411(1) of the *Corporations Act*.
 - (b) ***(SOE Shareholder Approval)*** SOE Shareholder Approval is obtained at the Scheme Meeting.
 - (c) ***(Court approval of Scheme)*** The Court makes orders under section 411(4)(b) of the *Corporations Act* approving the Scheme on the Second Court Date.

- (d) **(Order lodged with ASIC)** An office copy of the Court order approving the Scheme is lodged with ASIC as contemplated by section 411(10) of the Corporations Act on or before the Sunset Date.
- (e) **(No prohibitive orders)** Prior to 8.00 am on the Second Court Date, no Government Agency takes any action, or imposes any legal restraint or prohibition, to prevent the implementation of the Scheme (or any transaction contemplated by the Scheme), which remains in force at 8.00 am on the Second Court Date.
- (f) **(Regulatory Consents)** ASIC and ASX issue or provide (and do not withdraw) all such consents and approvals and do all other acts which are necessary or reasonably desirable for Implementation of the Scheme by 8.00 am on the Second Court Date **(Regulatory Consents)**.
- (g) **(No SOE Prescribed Event)** No SOE Prescribed Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (h) **(No Bidder Prescribed Event)** No Bidder Prescribed Event occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (i) **(No SOE Material Adverse Change)** No SOE Material Adverse Change occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (j) **(No Bidder Material Adverse Change)** No Bidder Material Adverse Change occurs between the date of this Agreement and 8.00 am on the Second Court Date.
- (k) **(No change of Recommendation)** Between the date of this Agreement and SOE Shareholders voting on the Scheme at the Scheme Meeting, the SOE Independent Directors do not change, qualify or withdraw their Recommendation.
- (l) **(Independent Expert's report)** The Independent Expert provides its report to the SOE Board concluding that the Scheme is fair and reasonable, and in the best interest of SOE Shareholders (and does not change that conclusion or withdraw its report by notice in writing to SOE prior to 8.00am on the Second Court Date).
- (m) **(Market fall)** Between the date of this Agreement and the close of the Business Day immediately prior to the Second Court Date, the ASX 300 index (or any successor or replacement index) does not on any ASX trading day fall by more than 15% below the level at which it closed on the preceding trading day and remain below that level at all times during 2 consecutive ASX trading days.
- (n) **(Approval of Options cancellation)** On or before the Scheme Meeting, SOE satisfies or obtains a waiver from any requirement of the Listing Rules that must be met to validly effect the cancellation of the Options.
- (o) **(Quotation of New WHSP Shares)** Prior to 8:00 am on the Second Court Date, the New WHSP Shares have been approved for official quotation by the ASX, subject only to customary conditions and to the Scheme becoming Effective.
- (p) **(SOE Warranties)** Each of the SOE Warranties that is qualified as to materiality is true and correct, and each SOE Warranty that is not so qualified is true and correct in all material respects, in each case on the date or dates specified in clause 7.1.
- (q) **(Bidder Warranties)** Each of the Bidder Warranties that is qualified as to materiality is true and correct, and each Bidder Warranty that is not so qualified is true and

correct in all material respects, in each case on the date or dates specified in clause 7.4.

Option Scheme Conditions

- 3.2 The obligations of SOE under clause 6.1(r) and of Bidder under clause 6.2(l) will not become binding and the Option Scheme will not take place until each of the following Conditions is satisfied or waived in accordance with clauses 3.6 to 3.12:
- (a) *(Scheme Effective)* The Scheme becomes Effective.
 - (b) *(ASX waiver)* ASX grants a waiver of any requirement under Listing Rule 6.23 in respect of the Option Scheme or SOE Shareholders give any necessary approvals under Listing Rule 6.23 in relation to the Option Scheme.
 - (c) *(Orders convening Option Scheme Meeting)* The Court orders the convening of the Option Scheme Meeting under section 411(1) of the Corporations Act.
 - (d) *(Optionholder Approval)* Optionholder Approval is obtained at the Option Scheme Meeting.
 - (e) *(Court approval of Option Scheme)* The Court makes orders under section 411(4)(b) of the Corporations Act approving the Option Scheme on the Second Court Date.
 - (f) *(Order lodged with ASIC)* An office copy of the Court order approving the Option Scheme is lodged with ASIC as contemplated by section 411(10) of the Corporations Act on or before the Sunset Date.
 - (g) *(No prohibitive orders)* Prior to 8.00 am on the Second Court Date, no Government Agency takes any action, or imposes any legal restraint or prohibition, to prevent the implementation of the Option Scheme (or any transaction contemplated by the Option Scheme), which remains in force at 8.00 am on the Second Court Date.
 - (h) *(No change of Recommendation)* Between the date of this Agreement and Optionholders voting on the Option Scheme at the Option Scheme Meeting, the SOE Independent Directors do not change, qualify or withdraw their Recommendation.
 - (i) *(Independent Expert's report)* The Independent Expert provides its report to the SOE Board concluding that the Option Scheme is fair and reasonable, and in the best interest of Optionholders (and does not change that conclusion or withdraw its report by notice in writing to SOE prior to 8.00am on the Second Court Date).

Reasonable endeavours

- 3.3 Each of SOE and Bidder must use its reasonable endeavours to procure that:
- (a) each of the Conditions is satisfied as expeditiously as possible and in any event on or before the Sunset Date and continues to be satisfied at all times until the last time it is required to be satisfied (as the case may require), including providing all reasonable assistance to the other party which is necessary to satisfy such Conditions; and
 - (b) there is no occurrence within the control of SOE or Bidder (as the context requires) or their Subsidiaries that would prevent the Conditions from being satisfied.
- 3.4 Without limiting clause 3.3, SOE or Bidder (as the context requires) must:

- (a) promptly apply for all relevant Regulatory Consents and provide the other party with a copy of all those applications;
- (b) take all the steps for which it is responsible as part of the Regulatory Consent process, including responding to requests for information at the earliest practicable time;
- (c) provide the other party with all information reasonably requested in connection with the applications for Regulatory Consents. Where the information is confidential or commercially sensitive to the party, it may provide the information directly to the relevant Government Agency; and
- (d) use reasonable endeavours to consult with the other party in advance in relation to all material communications with any Government Agency relating to any Regulatory Consent and, so far as it is able, allow the other party and its Representatives the opportunity to be present at any meetings with any Government Agency.

Share splitting

- 3.5 If the Scheme is not approved by SOE Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and SOE considers (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then SOE must:
- (a) apply for an order of the Court of the type contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
 - (b) make such submissions to the Court and file such evidence as counsel engaged by SOE to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

Waiver of conditions

- 3.6 The Conditions in clauses 3.1(e), (f), (n) and (o) and clause 3.2(g) are for the joint benefit of SOE and Bidder and may only be waived jointly by them.
- 3.7 The Conditions in clauses 3.1(h), (j), (l) and (q) and clause 3.2(i) are for the sole benefit of SOE and may only be waived by SOE.
- 3.8 The Conditions in clauses 3.1(g), (i), (k), (m) and (p) and clause 3.2(h) are for the sole benefit of Bidder and may only be waived by Bidder.
- 3.9 The Conditions in clauses 3.1(a), (b), (c) and (d) and clauses 3.2 (a), (b), (c), (d), (e) and (f) cannot be waived.
- 3.10 To be effective any waiver of the breach or non-fulfilment of any Condition must be in writing and a copy of the waiver must be provided to the other party prior to 8.00 am on the Second Court Date to be effective.
- 3.11 Subject to clause 3.12, a waiver of any Condition precludes the party who has the benefit of the Condition from suing the other party for any breach of this Agreement that resulted from any breach or non-fulfilment of the Condition.

- 3.12 A party entitled to waive a Condition under this clause 3 may do so in its absolute discretion. If the party who has the benefit of a Condition in waives a breach or non-fulfilment of the Condition on one or more terms, and the other party agrees to those terms, then those terms will apply notwithstanding any inconsistency with clause 3.10. If the other party does not agree to the terms of any waiver, the relevant Condition will not be waived.

Failure of Condition

- 3.13 Subject to clause 6.4, if a Condition:

- (a) is not satisfied or (where capable of waiver) waived by the date specified for its satisfaction; or
- (b) becomes incapable of being satisfied by the date specified for its satisfaction and is not waived,

and neither of the following has occurred:

- (c) the Independent Expert has opined to the effect that the Scheme or Option Scheme is not in the best interest of SOE Shareholders or Optionholders (respectively); or
- (d) a Superior Proposal has been received,

then SOE and Bidder must consult in good faith with a view to determining whether:

- (e) the Scheme and/or Option Scheme may proceed by way of alternative means or methods;
- (f) to extend the relevant time or date for satisfaction of the Conditions;
- (g) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme and/or Option Scheme or adjourning that application (as applicable) to another date agreed by SOE and Bidder; or
- (h) to extend the Sunset Date.

- 3.14 If SOE and Bidder are unable to reach agreement under clause 3.13 within five Business Days of the date on which they both become aware that the Condition is not satisfied or has become incapable of being satisfied (or, if earlier, by 8.00 am on the Second Court Date), or the parties are not required in the circumstances to consult under clause 3.13, then unless the relevant Condition is waived (and subject to clause 3.15):

- (a) the party entitled to the benefit of that Condition; or
- (b) either SOE or Bidder in the case of a Condition which is for the benefit of both of them jointly,

may in respect of a Condition:

- (c) in clause 3.1, terminate this Agreement; and
- (d) in clause 3.2, terminate this Agreement only in respect of the Option Scheme,

at any time prior to 8.00 am on the Second Court Date with immediate effect by written notice to the other party.

- 3.15 A party may not terminate this Agreement under clause 3.14 if the relevant Condition has not been satisfied, or is incapable of being satisfied, or there is an occurrence that will prevent the relevant Condition being satisfied by the date specified in this Agreement for its satisfaction, as a result of an act or omission by that party or any of its Related Bodies Corporate which results in a breach of this Agreement and either alone or together with other circumstances prevents that Condition being satisfied or capable of being satisfied.
- 3.16 Subject to the rights of the parties under clauses 7.7, 9 and 10 of this Agreement, following any termination under clause 3.14 no party will have any liability to the other parties in respect of this Agreement, other than in respect of a breach of this Agreement occurring prior to that termination.

Notice of changes

- 3.17 SOE must promptly notify Bidder, and Bidder must promptly notify SOE, after it becomes aware that any Condition has been satisfied, has become incapable of being satisfied or is not reasonably capable of being satisfied (having regard to the respective obligations of each party under clauses 3.3 and 3.4).
- 3.18 Upon receipt of notice given under clause 3.17, SOE or Bidder, as applicable, must give notice to the notifying party as soon as practicable as to whether or not it waives the breach or non-fulfilment of any Condition which has become incapable of being satisfied.
- 3.19 SOE must promptly notify Bidder, and Bidder must promptly notify SOE, of any change, matter, event or circumstance causing, or which is reasonably likely to cause:
- (a) a representation or warranty in this Agreement to be breached; or
 - (b) a material breach of this Agreement,
- and must provide Bidder or SOE (as applicable) with reasonable details of the relevant breach.

Certificates

- 3.20 On the Second Court Date:
- (a) Bidder and SOE will provide a joint certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(e), (f), (n) and (o) and clause 3.2(g) have been satisfied or waived in accordance with the terms of this Agreement;
 - (b) SOE will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a), (b), (g), (i), (k), (l), (m), (n) and (p) and clauses 3.2(b), (c), (d) and (h) relating to the Scheme have been satisfied or waived in accordance with the terms of this Agreement; and
 - (c) Bidder will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(h), (j) and (q) and clause 3.2(i) have been satisfied or waived in accordance with the terms of this Agreement.

4 Scheme of Arrangement

Scheme

- 4.1 SOE will propose a scheme of arrangement under which, subject to the Scheme becoming Effective, all the Scheme Shares will be transferred to Bidder.

- 4.2 If the Court does not make orders on the First Court Date to convene the Option Scheme Meeting due to concerns it has regarding the Option Scheme, SOE may, to the extent that the Court makes orders to convene the Scheme Meeting on the First Court Date or on a subsequent date, implement only the Scheme and the Bidder Group will have no grounds for objecting (and will not object) to the implementation of the Scheme.

Scheme Consideration

- 4.3 In consideration of the Scheme Shareholders transferring their Scheme Shares to Bidder at Completion, Bidder covenants in SOE's favour (in its own right and separately as trustee or nominee for each Scheme Shareholder) that Bidder will, on the Implementation Date and immediately prior to the transfer of the Scheme Shares to Bidder, pay and/or provide to each Scheme Shareholder, the Scheme Consideration in accordance with the terms of the Draft Scheme.

Option Scheme

- 4.4 SOE will propose a scheme of arrangement under which, subject to the Scheme and Option Scheme becoming Effective, all Scheme Options will be cancelled.

Option Scheme Consideration

- 4.5 In consideration for the Scheme Optionholders having their Scheme Options cancelled at Completion, Bidder covenants in SOE's favour (in its own right and separately as trustee or nominee for each Scheme Optionholder) that Bidder will, on the Implementation Date and immediately prior to the cancellation of the Scheme Options, pay to each Scheme Optionholder, the Option Scheme Consideration in accordance with the Draft Option Scheme.

Deed Poll and Option Scheme

- 4.6 Bidder covenants in favour of SOE (in its own right and separately as trustee for each of the SOE Shareholders and SOE Optionholders) to execute and deliver prior to the First Court Date, and (subject to their respective terms) perform, the Deed Poll and Option Scheme Deed Poll.

5 Co-operation

Giving effect to Scheme

- 5.1 Each party must use its reasonable endeavours and utilise all reasonable resources (including management, marketing and corporate relations resources, as well as the resources of external advisers) to give effect to the Scheme and Option Scheme and must execute all documents and do all acts and things (including produce the Scheme Booklet) as may be necessary or desirable for the Implementation of the Scheme and Option Scheme substantially in accordance with the Timetable.

6 Implementation

SOE's obligations

- 6.1 SOE must take all steps reasonably necessary to propose and implement the Scheme and Option Scheme in accordance with all necessary laws and regulations as soon as is reasonably

practicable and substantially in accordance with the Timetable, including doing anything required on behalf of SOE Shareholders and Optionholders which SOE is authorised to do. This includes:

- (a) **(Scheme Booklet)** Preparing the Scheme Booklet and dispatching the Scheme Booklet to SOE Shareholders and Optionholders (as applicable). The Scheme Booklet must:
 - (i) include:
 - (A) the Scheme and Option Scheme;
 - (B) a notice of the Scheme Meeting, a notice of Option Scheme Meeting and proxy forms;
 - (C) an explanatory statement in relation to the Scheme and Option Scheme issued under section 412 of the Corporations Act and registered by ASIC;
 - (D) a copy of the Independent Expert's report, a copy of this Agreement (without the schedules or annexures) and a copy of the executed Deed Poll and Option Scheme Deed Poll;
 - (E) a statement that each SOE Independent Director recommends that SOE Shareholders and Optionholders vote in favour of the Scheme and Option Scheme (as applicable), which may be expressed as subject to the Independent Expert concluding that the Scheme and Option Scheme are each fair and reasonable, and in the best interest of SOE Shareholders and Optionholders respectively and to be given in the absence of a Superior Proposal; and
 - (F) a statement that each SOE Independent Director with a relevant interest in SOE Shares and SOE Options intends to vote those SOE Shares and SOE Options in favour of the Scheme and Option Scheme (as applicable), which statement may be expressed as subject to the Independent Expert concluding that the Scheme and Option Scheme are each fair and reasonable, and in the best interest of SOE Shareholders and Optionholders respectively and to be given in the absence of a Superior Proposal; and
 - (ii) comply with all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules.
- (b) **(Consultation)** Providing Bidder with drafts of the Scheme Booklet, consulting with Bidder in relation to the content and presentation of the Scheme Booklet and giving Bidder and its representatives a reasonable opportunity to provide input about the content and presentation of the Scheme Booklet, and obtaining Bidder's consent to include the Bidder Scheme Information in the form and context in which it appears.
- (c) **(Access to information)** During the Agreed Period, providing Bidder and its Representatives with reasonable access during normal business hours and within a reasonable time of a request by Bidder, to all information about SOE and its Subsidiaries that Bidder or its Representatives reasonably require to prepare the necessary documentation for obtaining any Regulatory Consents.

- (d) ***(Engage the Independent Expert)*** Engaging the Independent Expert to prepare and provide its report for inclusion in the Scheme Booklet, and providing all reasonable assistance and information to the Independent Expert to enable it to do so.
- (e) ***(Approval of draft for ASIC)*** As soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the SOE Board, or of a committee of the SOE Board appointed for this purpose, is convened to consider, and if thought fit, approve, that draft as being in a form appropriate for provision to ASIC for review.
- (f) ***(Liaison with ASIC)*** As soon as practicable after the date of this Agreement, providing an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 6.1(e), to ASIC for review and approval for the purposes of section 411(2) of the Corporations Act and:
 - (i) liaising with ASIC during the period of ASIC's consideration of that draft of the Scheme Booklet; and
 - (ii) keeping Bidder reasonably informed of any material matters raised by ASIC in relation to the Scheme Booklet, and using all reasonable endeavours in co-operation with Bidder to resolve any such matters.
- (g) ***(Approval of Scheme Booklet)*** As soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the SOE Board, or of a committee of the SOE Board appointed for this purpose, is convened to consider, and if thought fit, approve, the Scheme Booklet for dispatch to SOE Shareholders and Optionholders (as applicable), subject to the approval of the Court.
- (h) ***(Registration)*** Requesting ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme and Option Scheme in accordance with section 412(6) of the Corporations Act.
- (i) ***(Section 411(17)(b) statement)*** Applying to ASIC for a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme and Option Scheme.
- (j) ***(Engage suitable counsel)*** Engaging suitable counsel to represent SOE in all Court proceedings related to the Scheme and Option Scheme.
- (k) ***(Regulatory notifications)*** Lodging with each Government Agency within the relevant time periods all necessary documentation and filings in relation to the Scheme and Option Scheme and the transactions contemplated by this Agreement.
- (l) ***(Court direction)*** Applying to the Court for orders under section 411(1) of the Corporations Act directing SOE to convene the Scheme Meeting and Option Scheme Meeting.
- (m) ***(Scheme Meetings)*** Taking all steps reasonably necessary to comply with the orders of the Court, including dispatching the Scheme Booklet to SOE Shareholders and Optionholders and convening and holding the Scheme Meeting and Option Scheme Meeting.
- (n) ***(SOE Scheme Information)*** Taking all reasonable steps to ensure that the SOE Scheme Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the Dispatch Date.

- (o) **(SOE new information)** Providing to SOE Shareholders and Optionholders (as applicable) any further or new information which arises after the Dispatch Date and prior to the Scheme Meeting or Option Scheme Meeting which is necessary to ensure that the information contained in the Scheme Booklet is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (p) **(Court approval of Scheme)** If SOE Shareholder Approval is obtained at the Scheme Meeting and, if necessary, Bidder and SOE agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions in clause 3.1 (other than the Conditions in clauses 3.1(c) and 3.1(d)) will be satisfied or waived on or prior to 8.00am on the proposed Second Court Date, applying (and, to the extent necessary, re-applying) to the Court for orders approving the Scheme.
- (q) **(Court approval of Option Scheme)** If SOE Optionholder Approval is obtained at the Option Scheme Meeting and, if necessary, Bidder and SOE agree on the Business Day immediately following the Option Scheme Meeting that it can be reasonably expected that all of the Conditions in clause 3.2 (other than the Conditions in clauses 3.2(a), 3.2(e) and 3.2(f)) will be satisfied or waived on or prior to 8.00am on the proposed Second Court Date, applying (and, to the extent necessary, re-applying) to the Court for orders approving the Option Scheme.
- (r) **(Lodge copy of Court order)** Lodging an office copy of the Court orders approving the Scheme and Option Scheme (if made) with ASIC no later than 10.00 am on the next Business Day after the order is made.
- (s) **(Registration)** If the Scheme or Option Scheme become Effective, executing proper instruments of transfer of, and effecting and entering in:
 - (i) the Register the transfer of, the Scheme Shares to Bidder under the Scheme on the Implementation Date; and
 - (ii) the Option Register the cancellation of the Scheme Options under the Option Scheme on the Implementation Date.
- (t) **(Register information)** Providing Bidder and its share registry with all information necessary, or reasonably requested, in order to assist Bidder to pay the Scheme Consideration and Option Scheme Consideration.

Bidder's obligations

- 6.2 Bidder must take all steps reasonably necessary to implement the Scheme and Option Scheme in accordance with all necessary laws and regulations as soon as is reasonably practicable and substantially in accordance with the Timetable. This includes:
- (a) **(Deed Poll and Option Scheme Deed Poll)** Executing the Deed Poll and Option Scheme Deed Poll as soon as practicable on or before the First Court Date before the Scheme Booklet is dispatched to SOE Shareholders and Optionholders (as applicable).
 - (b) **(Bidder Scheme Information)** Preparing and providing to SOE, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Scheme Information.
 - (c) **(Independent Expert's report)** Providing all reasonable assistance and information to the Independent Expert in connection with the preparation of its report for inclusion in the Scheme Booklet.

- (d) **(Representation)** Procuring that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme and Option Scheme, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all things and take all steps within its power that may be necessary to ensure the fulfilment of its obligations in relation to the Scheme and Option Scheme, and, to the extent that leave of the Court is required for Bidder to be represented at those Court hearings, apply for that leave.
- (e) **(Review of Scheme Booklet)** As soon as reasonably practicable after delivery, reviewing the drafts of the Scheme Booklet prepared by SOE and providing comments on those drafts in good faith.
- (f) **(Approval of draft for ASIC)** As soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procuring that a meeting of the appropriate decision-making body of Bidder is held to consider approving those sections of the draft that relate to Bidder as being in a form appropriate for provision to ASIC for review.
- (g) **(Approval of Scheme Booklet)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procuring that a meeting of the appropriate decision-making body of Bidder is held to consider approving those sections of the Scheme Booklet that relate to Bidder as being in a form appropriate for despatch to SOE Shareholders and Optionholders, subject to approval of the Court.
- (h) **(Accuracy of Bidder Scheme Information)** Before the Dispatch Date, verifying to SOE the accuracy of the Bidder Scheme Information contained in the Scheme Booklet, and consenting to the inclusion of that information in the form and context in which it appears in the Scheme Booklet, in each case subject to Bidder being reasonably satisfied as to those matters.
- (i) **(Bidder Scheme Information)** Taking all reasonable steps to ensure that the Bidder Scheme Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the Dispatch Date.
- (j) **(Bidder new information)** Providing to SOE any further or new information about Bidder which arises after the Dispatch Date and prior to the Scheme Meeting or Option Scheme Meeting which is necessary or reasonably required by SOE to ensure that the Bidder Scheme Information disclosed to SOE Shareholders and Optionholders is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (k) **(Scheme Consideration)** If the Scheme becomes Effective, paying or providing the Scheme Consideration in accordance with clause 4.3 on Completion.
- (l) **(Option Scheme Consideration)** If the Option Scheme becomes Effective, paying the Option Scheme Consideration in accordance with clause 4.5 on Completion.
- (m) **(Regulatory notifications)** Without limiting any obligation of Bidder under any other provision of this Agreement, lodging with each Government Agency within the relevant time periods all necessary documentation and filings required by law to be lodged by Bidder in relation to the Scheme, Option Scheme and the transactions contemplated by this Agreement.

- (n) **(Reasonable assistance)** Without limiting any obligation of Bidder under any other provision of this Agreement, providing any assistance or information reasonably requested by SOE in relation to the Scheme and/or Option Scheme.
- (o) **(Quotation of New Shares)** Apply to ASX for quotation of New WHSP Shares to be issued as Scheme Consideration, initially on a deferred settlement basis and then on a normal T+3 settlement basis and in accordance with the Timetable.

Timetable

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

Conduct of appeals

6.4 If the Court refuses to grant an order convening the Scheme Meeting or the Option Scheme Meeting, or approving the Scheme or Option Scheme, then SOE and Bidder must consult with each other in good faith as to whether to appeal the Court's decision. If, in the opinion of senior counsel obtained by either party within five Business Days of the Court's decision, there are reasonable prospects of successfully appealing the Court's decision then:

- (a) SOE must appeal the Court's decision, the cost of which is to be borne equally by SOE and Bidder; and
- (b) the Sunset Date will be extended to 6 July 2012 (or any earlier date agreed to by SOE and Bidder) to account for the period for determination of the appeal on an expedited basis.

Conduct of business

6.5 Subject to clause 6.6, during the Agreed Period, SOE and Bidder must, and must ensure that each of its Subsidiaries, conduct their businesses in the ordinary course.

6.6 Any restriction on conduct which is imposed in clause 6.5, does not apply to the extent that the conduct, or the intention to carry out the conduct, was Fairly Disclosed by SOE or Bidder to the other party on or before the date of this Agreement.

Restrictions on Bidder

6.7 Without limiting clause 6.5, during the Agreed Period, Bidder must, and must procure that each of its Subsidiaries, not take any action which would be reasonably expected to give rise to a Bidder Prescribed Event.

6.8 Any restriction on conduct which is imposed in clause 6.7 does not apply to the extent that:

- (a) the conduct is undertaken by a member of the Bidder Group in conducting its businesses in the ordinary course of business;
- (b) the conduct, or the intention to carry out the conduct, was Fairly Disclosed to SOE on or before the date of this Agreement;
- (c) the conduct is required or otherwise elected (acting reasonably) to be undertaken by Bidder in connection with:
 - (i) the Scheme;

- (ii) the Option Scheme;
 - (iii) the Deed Poll;
 - (iv) the Option Scheme Deed Poll ; or
 - (v) this Agreement; or
- (d) the conduct is approved in writing by SOE (which approval must not be unreasonably withheld or delayed).

Resignation of directors

6.9 As soon as practicable on the Implementation Date after the transfer of the Scheme Shares to Bidder under the terms of the Scheme, SOE must procure that those directors on the SOE Board and the board of directors of each member of the SOE Group which Bidder nominates resign with effect from the Implementation Date.

7 Warranties

SOE Warranties

- 7.1 SOE represents and warrants to Bidder at the date of this Agreement and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:
- (a) it and each of its Subsidiaries is a corporation validly existing under the laws of its place of incorporation;
 - (b) it has taken all necessary corporate action to authorise entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement and to carry out the transactions contemplated by this Agreement;
 - (c) it has full corporate power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;
 - (d) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy, subject to laws generally affecting creditors' rights and the principles of equity;
 - (e) this Agreement does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which any member of the SOE Group is a party or is subject or by which any member of the SOE Group is bound;
 - (f) it has obtained (or will have obtained prior to 8.00 am on the Second Court Date) all necessary consents and approvals to enable it to enter into and perform this Agreement. However, it does not represent or warrant that the Regulatory Consents will necessarily be obtained;
 - (g) as at the date of this Agreement, its issued equity securities comprise:
 - (i) 593,719,107 SOE Shares; and
 - (ii) 74,024,813 Options,

and there are no other options, preference shares of any class, rights, performance rights, shares, convertible notes or other securities on issue, and neither it nor any of its Subsidiaries are under any obligation to issue and have not granted any person the right to call for the issue of any such securities in it or any of its Subsidiaries;

- (h) the SOE Scheme Information:
 - (i) will comply in all material respects with the requirements of all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules; and
 - (ii) be provided on the understanding that each of the Bidder Indemnified Parties will rely on that information for the purposes of preparing the Bidder Scheme Information and implementing the Scheme and Option Scheme;
- (i) as at the Dispatch Date, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Scheme Information and the Independent Expert's report) will not be misleading or deceptive in any material respect (whether by omission or otherwise); and
- (j) it is not in breach of its continuous or periodic financial disclosure obligations under the Listing Rules or the Corporations Act and, subject to the announcement of the Scheme, Option Scheme and the execution of this Agreement, as at the date of this Agreement SOE is not relying on Listing Rule 3.1A to withhold any information from disclosure under the Listing Rules.

SOE indemnity

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

Bidder Warranties

- 7.4 Bidder represents and warrants to SOE (on its own behalf and separately as trustee for each of the other SOE Indemnified Parties) at the date of this Agreement and on each subsequent day until and including 8:00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:
 - (a) it, and each of its Subsidiaries, is a corporation validly existing under the laws of its place of incorporation;
 - (b) it has taken all necessary corporate action to authorise the entry into this Agreement and has taken or will take all necessary corporate action to authorise the performance of this Agreement and to carry out the transactions contemplated by this Agreement;
 - (c) it has full corporate power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement;

- (d) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy, subject to laws generally affecting creditors' rights and the principles of equity;
- (e) this Agreement does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it, or any of its Subsidiaries, is a party or is subject or by which it or any of its Subsidiaries is bound;
- (f) it has obtained (or will have obtained prior to 8.00 am on the Second Court Date) all necessary consents and approvals to enable it to enter into and perform this Agreement. However, it does not represent or warrant that the Regulatory Consents will necessarily be obtained;
- (g) as at the date of this Agreement its issued equity securities comprise 238,640,580 WHSP Shares, and there are no other options, preference shares of any class, rights, performance rights, shares, convertible notes or other securities on issue, and neither it nor any of its Subsidiaries are under any obligation to issue and have not granted any person the right to call for the issue of any such securities in it or any of its Subsidiaries;
- (h) as at the Dispatch Date, the Bidder Scheme Information, in the form and context in which it appears in the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (i) the Bidder Scheme Information provided to SOE in accordance with clause 6.2(i) for inclusion in the Scheme Booklet will:
 - (i) comply in all material respects with the requirements of all applicable laws, including the Corporations Act, applicable ASIC guidance and policies and the Listing Rules; and
 - (ii) be provided on the understanding that each of the SOE Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme and Option Scheme in accordance with the requirements of the Corporations Act;
- (j) all Bidder Scheme Information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's report to be prepared and completed will be provided on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's report for inclusion in the Scheme Booklet;
- (k) all information provided by or on behalf of Bidder to SOE during the course of negotiations in relation to the Scheme and Option Scheme and preparation of the Scheme Booklet is complete, accurate and not misleading in all material respects (including by omission);
- (l) as at the date of this Agreement, Bidder has available to it sufficient cash amounts from internal cash resources to satisfy Bidder's obligation to pay the Scheme Consideration (assuming all SOE Shareholders elect to receive cash for their Scheme Shares) and Option Scheme Consideration;

- (m) at 8.00am on the Second Court Date, Bidder will have available to it sufficient cash amounts from internal cash resources to satisfy Bidder's obligation to pay the Scheme Consideration (assuming all SOE Shareholders elect to receive cash for their Scheme Shares) and Option Scheme Consideration in accordance with its obligations under this Agreement, the Deed Poll and Option Scheme Deed Poll;
- (n) the New WHSP Shares to be issued as Scheme Consideration will be validly issued, fully paid, and rank equally with Bidder's other issued fully paid ordinary shares from their date of issue;
- (o) it is not in breach of its continuous or periodic financial disclosure obligations under the Listing Rules or the *Corporations Act* and subject to the announcement of the Scheme, Option Scheme and execution of this Agreement, is not relying on Listing Rule 3.1A to withhold any information from disclosure under the Listing Rules of the kind referred to in section 713(5)(b) of the *Corporations Act* that may otherwise be reasonably expected by investors and their professional advisers to be disclosed;
- (p) no delisting or suspension in trading in respect of the WHSP Shares is pending or, to the knowledge of Bidder, threatened; and
- (q) the approval of the holders of WHSP Shares (or any class of them) is not required in connection with the Scheme or Option Scheme.

Bidder indemnity

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

Release

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

- (b) will survive termination of this Agreement; and
- (c) is given with the intent that liability under it is not confined to breaches which are discovered before the date of termination of this Agreement.

Survival of indemnities

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

No other warranties or reliance

- 7.10 Each party acknowledges that no other party (nor any person acting on that other party's behalf) has made any warranty, representation or other inducement to it to enter into this Agreement, except for the representations and warranties expressly set out in this Agreement.
- 7.11 Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any warranty, representation or other inducement by or on behalf of any other party, except for any warranty or representation expressly set out in this Agreement.

8 Termination

Termination for breach

- 8.1 Without prejudice to any other rights of termination under this Agreement, either party may terminate this Agreement by giving the other party written notice at any time before 8.00 am on the Second Court Date if:
- (a) the other party is in material breach of any term of this Agreement, or the other party is in breach of a warranty that is qualified as to materiality or is in material breach of a warranty that is not qualified by materiality given by the other party under clauses 7.1 or 7.4 (as applicable) on or before the Second Court Date; and
 - (b) the party wishing to terminate this Agreement has given the other party a written notice setting out details of the breach and stating its intention to terminate this Agreement; and
 - (c) the breach has not been remedied 5 Business Days (or any shorter period ending immediately before 8.00 am on the Second Court Date) from the date the notice under clause 8.1(b) is given.

Automatic termination

- 8.2 This Agreement will terminate automatically without the need for action by any party in the event that:
- (a) subject to paragraph (c), SOE Shareholder Approval is not obtained at the Scheme Meeting;

- (b) if clause 3.5 requires SOE to apply for the order referred to in that clause, the order is refused with the result that the Scheme is not approved by SOE Shareholders; or
- (c) the Scheme does not become Effective by the Sunset Date.

Termination by SOE or Bidder

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

Termination following Superior Proposal

- 8.5 Without prejudice to any other rights of termination under this Agreement, but subject to clause 12.2, either Bidder or SOE may terminate this Agreement by giving the other party written notice at any time before 8.00 am on the Second Court Date if the SOE Independent Directors determine and publicly announce that a Competing Proposal is a Superior Proposal.

Effect of termination

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

9 Public announcements

Public announcements

- 9.1 Neither party may make a public announcement about this Agreement (including any termination of this Agreement), the Scheme Booklet, the Scheme or the Option Scheme unless:
- (a) the other party has given its prior approval to the form of the announcement (acting reasonably); or

- (b) applicable law or the Listing Rules requires an announcement to be made, subject to clause 9.3.

9.2 The parties must use all reasonable endeavours to participate constructively and promptly with respect to the approvals and consultation contemplated by clauses 9.1 and 9.3.

Required disclosure

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

Statements on termination

9.4 Without limiting clause 9.1, the parties must act in good faith and use all reasonable endeavours to issue an agreed statement or announcement in respect of any termination of this Agreement.

10 Confidentiality

Bidder's obligations

10.1 Bidder acknowledges and agrees that it will:

- (a) only use SOE Confidential Information or any part of it in relation to the Scheme and/or Option Scheme and their implementation and not for anything else;
- (b) not use SOE Confidential Information or any part of it to the competitive disadvantage of SOE or any of its Subsidiaries;
- (c) keep all SOE Confidential Information in confidence;
- (d) only disclose SOE Confidential Information:
 - (i) to those Representatives of Bidder who:
 - (A) require SOE Confidential Information to produce the Bidder Scheme Information or review the Scheme Booklet; and
 - (B) are informed of Bidder's obligations under this clause 10.1 and agree to comply with such obligations as if they were Bidder; or
 - (ii) to the extent required by law or the Listing Rules, subject to first observing the terms of clause 9.3;
 - (iii) to the extent that the disclosure is necessary for the purpose of implementing the Scheme and/or Option Scheme, including obtaining all necessary Regulatory Consents, and enforcing the provisions of this Agreement;
 - (iv) to the extent that such information is required for inclusion in any documents to be made available to the Court in support of the Scheme and/or Option Scheme; or
 - (v) with SOE's prior written consent.

11 Conduct of Court proceedings

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

12 Exclusivity

Notification

- 12.1 During the Agreed Period, if a Competing Proposal is put to SOE (*Other Proposal*) then SOE must promptly inform Bidder of that fact, the identity of the person or persons involved in the Other Proposal and the key terms of the Other Proposal (*Other Proposal Notice*).

Bidder's right to match Other Proposal

- 12.2 SOE must not enter into any agreement, arrangement or understanding in relation to an Other Proposal, announce one Other Proposal publicly or rely on clause 8.5 as a result of an Other Proposal, unless:
- (a) SOE gives Bidder an Other Proposal Notice in relation to the Other Proposal;
 - (b) a period of 2 Business Days has elapsed from the date on which Bidder receives the Other Proposal Notice.
- 12.3 Despite clause 12.2, to the extent required to discharge what they have determined in good faith to be their fiduciary or statutory obligations, the SOE Board may release a public announcement acknowledging the receipt of an Other Proposal and:
- (a) recommending that SOE Shareholders and Optionholders take no action in relation to the Other Proposal; and
 - (b) reserving the SOE Board's position in relation to its Recommendation,
- provided that any such announcement does not disclose the person from whom the Other Proposal has been received nor any of the material terms of the Other Proposal, including the price.
- 12.4 If SOE gives an Other Proposal Notice, Bidder will have the right, but not the obligation, at any time until the expiration of 2 Business Days following receipt of the Other Proposal Notice to:
- (a) offer to amend the terms of the Scheme and Option Scheme; or
 - (b) to propose any other transaction,

which offer or proposal must be submitted to SOE in writing (each a *Bidder Counterproposal*), and if Bidder does so, the SOE Independent Directors must review the Bidder Counterproposal in good faith to determine whether the Bidder Counterproposal is more favourable to SOE Shareholders and Optionholders than the Other Proposal.

- 12.5 If the SOE Independent Directors determine, in good faith, that the Bidder Counterproposal is more favourable to SOE Shareholders and Optionholders than the Other Proposal, then:
- (a) if the Bidder Counterproposal contemplates an amendment to the Scheme and/or Option Scheme, the parties must enter into a deed amending this Agreement and all other necessary documents to reflect the Bidder Counterproposal;
 - (b) if the Bidder Counterproposal contemplates any other transaction, SOE must make an announcement as soon as reasonably practicable recommending the Bidder Counterproposal, in the absence of a Superior Proposal, and the parties must pursue implementation of the Bidder Counterproposal in good faith; and
 - (c) SOE must not take any of the steps referred to in clause 12.2.

Normal provision of information

- 12.6 Nothing in this clause 12 prevents SOE Group from:
- (a) providing information to its Representatives, rating agencies or any Government Agency;
 - (b) providing information to customers, joint venturers and suppliers in the ordinary course of their businesses; or
 - (c) making presentations to brokers, portfolio investors or analysts in the ordinary course of their businesses.

13 Costs and stamp duty

Costs

- 13.1 Subject to clause 13.2, each party must bear its own costs and expenses (including professional fees and stamp duty) incurred by it in connection with the negotiation, preparation and execution of this Agreement and the implementation or attempted implementation of the Scheme and Option Scheme.

Stamp duty

- 13.2 Bidder must pay all stamp duty and any related fines or penalties in respect of this Agreement, the Deed Poll, the Option Scheme Deed Poll and the acquisition of the Scheme Shares and Scheme Options in accordance with the Scheme and Option Scheme and indemnify SOE (on SOE's own behalf and separately as trustee or nominee for the other SOE Indemnified Parties and SOE Shareholders and Optionholders) against any liability arising from failure to comply with this clause 13.2.

14 Notices

Requirements

- 14.1 All notices must be:
- (a) in legible writing and in English;

- (b) addressed to the recipient at the address or fax number set out below or to any other address or fax number that a party may notify to the other:

to SOE:

Address:	Level 2, 160 Pitt Street Mall, Sydney NSW 2000
Attention:	Mr Graeme Crampton and Mr Ross Strang, Directors
Fax no:	+61 2 9210 7099

to Bidder:

Address:	Level 1, 160 Pitt Street Mall, Sydney NSW 2000
Attention:	Mr Ian Bloodworth, Company Secretary
Fax no:	+61 2 9233 1025

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

Receipt of notices

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

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

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

15 General

Entire agreement

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

Further assurances

- 15.2 Each party will promptly do everything necessary, including executing and delivering all further documents required by law or reasonably requested by the other party, to implement this Agreement, the Scheme and Option Scheme.

No merger

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

Assignment

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

Invalid or unenforceable provisions

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

Waiver and exercise of rights

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

Amendment

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

Counterparts

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

Rights cumulative

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

Consents or approvals

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

Severability

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

GST

- 15.15 Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- 15.16 To the extent that any supply made by a party to another party (*Recipient*) under or in connection with this Agreement is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 15.17 The amount of GST payable in accordance with clause 15.16 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

Governing law and jurisdiction

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

Service of process

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

- (a) by being delivered to or left at its address for service of notices under clauses 14.1 and 14.2; or
- (b) in any other way permitted by law.

Execution

Executed as an agreement.


Signed by)
Souls Private Equity Limited)
by a director and secretary/director:)



Signature of director

ROSS STANGE.

Name of director (please print)

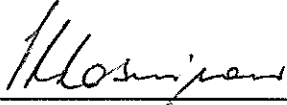


Signature of ~~director~~/secretary

LARINA TCHERKEZIAN

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

Signed by)
Washington H. Soul Pattinson and)
Company Limited)
by a director and secretary/director:)



Signature of director

PETER R. ROBINSON.

Name of director (please print)



Signature of ~~director~~/secretary

IAN D. BLOODWORTH

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

Annexure 1

Timetable

Event	Indicative date
Enter into Scheme Implementation Agreement	7 October 2011
Provide Scheme Booklet to ASIC for review and comment	7 October 2011
First Court Date	28 October 2011
Scheme Booklet registered by ASIC and lodged with ASX	28 October 2011
SOE Board meeting to approve Scheme Booklet and its dispatch	31 October 2011
Dispatch Scheme Booklet to SOE Shareholders and Optionholders	11 November 2011
Latest date for return of completed proxy forms for Scheme Meeting	12 December 2011
Eligibility for voting at Scheme Meeting and Option Scheme Meeting determined	12 December 2011
Scheme Meeting and Option Scheme Meeting	14 December 2011
Application for Official Quotation of New WHSP Shares	14 December 2011
Second Court Date (<i>SCD</i>)	19 December 2011
Notify ASX of Court approval of the Scheme	19 December 2011
Effective Date (lodge office copy of Court order approving the Scheme and Option Scheme with ASIC)	20 December 2011
SOE Shares suspended from trading on ASX	20 December 2011
Scheme Record Date	29 December 2011
Implementation Date	4 January 2012

Annexure 7

Share Scheme Consideration

1. Election

- 1.1 A Scheme Shareholder (other than an Ineligible Foreign Shareholder) may make an Election for either Cash Consideration or Scrip Consideration by completing the Election Form which accompanies the Scheme Booklet and returning it to the address specified on that form or submitting it via the method set out in that form so that it is received by SOE no later than the Election Date.
- 1.2 Subject to the remaining provisions of this clause 1, an Election:
- (a) must be made in accordance with the terms and conditions on the Election Form (other than an Election deemed to be made pursuant to and in accordance with clause 1.5);
 - (b) will be deemed to apply to the entire registered holding of SOE Shares of the Scheme Shareholder as at the Scheme Record Date regardless of whether the Scheme Shareholder's holding of Scheme Shares is more or less than the Scheme Shareholder's holding at the time it made its Election; and
 - (c) once made, may be varied before the Election Date by a Scheme Shareholder lodging or submitting a replacement Election Form in accordance with the instructions on the Election Form.
- 1.3 Subject to clause 1.13 to 1.16, a Scheme Shareholder that holds one or more parcels of SOE Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of SOE Shares (subject to it providing to SOE and Bidder any substantiating information they reasonably require), and, for the purposes of calculating the Scheme Consideration to which that Scheme Shareholder is entitled under the Scheme, each such parcel of SOE Shares will be treated as though it were held by a separate Scheme Shareholder.
- 1.4 Any purported Election not made or deemed not to have been made in accordance with clauses 1.1, 1.2 and, if applicable 1.3, will not be valid for any purpose and will not be recognised by SOE or Bidder.
- 1.5 Any Scheme Shareholder who has not made a valid Election is, for the purpose of the Scheme, deemed to have made a valid Election for Cash Consideration.

Form of Scheme Consideration

- 1.6 Subject to clauses 1.13 to 1.16, if a Scheme Shareholder:
- (a) is deemed to have elected Cash Consideration, the Scheme Shareholder will be entitled to receive as Scheme Consideration the Cash Consideration for each Scheme Share held by that Scheme Shareholder at the Scheme Record Date; or
 - (b) elects to receive Scrip Consideration, the Scheme Shareholder will be entitled to receive as Scheme Consideration the Scrip Consideration for each Scheme Share held by that Scheme Shareholder at the Scheme Record Date.
- 1.7 SOE may, with Bidder's consent (which may not be unreasonably withheld or delayed), settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with any Election, whether arising generally or in relation to any particular Election of a

Scheme Shareholder, and any decision is conclusive and binding on all relevant Scheme Shareholders and other persons to whom the decision relates.

Provision of Scheme Consideration

- 1.8 On the Implementation Date, in consideration of the transfer to Bidder of the Scheme Shares, SOE must procure Bidder to pay or provide the Scheme Consideration to each Scheme Shareholder in respect of each Scheme Share held by that Scheme Shareholder.
- 1.9 SOE's obligation under clause 1.8 will be satisfied by procuring Bidder:
- (a) on or before the Implementation Date, to deposit an amount equal to the aggregate amount of the Cash Consideration payable to Scheme Shareholders in accordance with this clause 1 in cleared funds in a trust account operated by SOE, and in the name of SOE, to be held on trust for the Scheme Shareholders for the purpose of paying the aggregate amount of Cash Consideration to Scheme Shareholders, except that any interest on the amount deposited (less any bank fees and other charges) will be for the account of Bidder; and
 - (b) on the Implementation Date, to issue and allot to each Scheme Shareholder (other than an Ineligible Foreign Shareholder) such number of New WHSP Shares as that Scheme Shareholder is entitled to as Scrip Consideration for each Scheme Share held by them in accordance with this clause 1; and
 - (c) on the Implementation Date, enter into the register of members of Bidder the name and address of each Scheme Shareholder (other than an Ineligible Foreign Shareholder) in respect of the aggregate number of New WHSP Shares issued to them under clause 1.9(b).
- 1.10 On the Implementation Date, subject to Bidder depositing the Cash Consideration in accordance with clause 1.9(a), SOE will (and will procure Bidder to) pay each Scheme Shareholder the aggregate amount of the cash (if any) as that Scheme Shareholder is entitled to as Cash Consideration for each Scheme Share held by them under this clause 1:
- (a) by cheque (drawing on the trust account referred to in clause 1.9(a)) sent by prepaid post to Scheme Shareholder's address in the Register as at the Scheme Record Date; or
 - (b) by depositing or procuring the Registry to deposit such amount into an account with any Australian ADI (as defined in the Corporations Act) notified to SOE (or SOE's agent who manages the Registry) by an appropriate authority from the Scheme Shareholder.
- 1.11 As soon as practicable after the Implementation Date and no later than 5 Business Days after the Implementation Date, SOE must procure that Bidder despatch to each Scheme Shareholder (other than an Ineligible Foreign Shareholder) by pre-paid post to his or her address recorded in the Register as at the Scheme Record Date a holding statement or notice confirming the issue of the New WHSP Shares (if any) to that Scheme Shareholder in accordance with the Scheme.

Binding instruction or notifications

- 1.12 Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and SOE relating to Scheme Shares as at the Scheme Record Date (including, any instructions relating to payment of dividends or to communications from SOE) will, from the Scheme Record Date, be deemed (except to the extent determined otherwise by Bidder in its sole discretion) to be a similarly binding instruction or notification

to Bidder, and accepted by Bidder, in respect of the New WHSP Shares (if any) issued to the Scheme Shareholder pursuant to the Scheme, until that instruction or notification is revoked or amended in writing addressed to Bidder through the Registry, provided that any such instructions or notifications accepted by Bidder will apply to and in respect of the issue of New WHSP Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

Ineligible Foreign Shareholders

- 1.13 Each Ineligible Foreign Shareholder is only entitled and will be deemed to have elected to receive as Scheme Consideration the Cash Consideration for each Scheme Share held by it at the Scheme Record Date. SOE will be under no obligation to procure that Bidder issues, and Bidder has no obligation to issue, any New WHSP Shares to any Ineligible Foreign Shareholder as Scheme Consideration under the Scheme. Any Election purportedly made by an Ineligible Foreign Shareholder will be invalid.

Fractional entitlements

- 1.14 If the aggregate entitlement of that Scheme Shareholder to Scrip Consideration in accordance with the Scheme includes a fractional entitlement to a New WHSP Share, then the entitlement of that Scheme Shareholder must be rounded up or down, with any fractional entitlement of less than 0.5 being rounded down to the nearest whole number of New WHSP Shares, and any fractional entitlement of 0.5 or more being rounded up to the nearest whole number of New WHSP Shares.
- 1.15 If the aggregate entitlement of a Scheme Shareholder to Cash Consideration in accordance with the Scheme includes a fractional entitlement to a cent in cash, then the entitlement of that Scheme Shareholder must be rounded up or down, with any fractional entitlement of less than half a cent being rounded down to the nearest whole cent, and any fractional entitlement of half a cent or more being rounded up to the nearest cent.

Share Splitting

- 1.16 If SOE reasonably believes that a Scheme Shareholder that holds a holding of Scheme Shares has, on or before the Scheme Record Date, dealt with its SOE Shares (including splitting or dividing a holding) since the date of the Scheme Implementation Agreement in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of that Scheme Shareholder's entitlement to the Scheme Consideration, then Bidder may give notice to those Scheme Shareholders:
- (a) setting out the names and registered addresses of all of them;
 - (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 as the deemed holder of all the specified Scheme Shares shall, for the purposes of the 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 Scheme, be taken to hold no Scheme Shares.

Status of New WHSP Shares

- 1.17 SOE must procure that the New WHSP Shares issued as Scheme Consideration by Bidder, on their issue:
- (a) are duly and validly issued and fully paid;
 - (b) rank equally in all respects with all other WHSP Shares then on issue; and
 - (c) are free from any mortgage, charge, lien, encumbrance or other security interests.
- 1.18 SOE must procure that Bidder makes an application to the ASX to have the New WHSP Shares issued as Scheme Consideration listed for quotation on the official list of the ASX prior to 8:00am on the Second Court Date in accordance with clause 6.2(o) of the Scheme Implementation Agreement.

Joint Holders

- 1.19 In the case of Scheme Shares held in joint names:
- (a) any holding statements for New WHSP Shares to be issued to Scheme Shareholders in accordance with the Scheme will be issued in the names of the joint holders; and
 - (b) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders, and will be forwarded to the holder whose name appears first in the Register as at the Scheme Record Date.