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13 February 2012

SCHEME IMPLEMENTATION AGREEMENT

Aurium Resources Limited (ASX: AGU) (**Aurium**) and Padbury Mining Limited (ASX: PDY) (**Padbury**) have today announced that they have entered into a binding scheme implementation agreement for the acquisition by Padbury of Aurium by way of a scheme of arrangement.

The scheme implementation agreement that governs the proposed transaction is attached.

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Agreement

[Executed version for
release to ASX]

Scheme implementation agreement

Padbury Mining Limited

Aurium Resources Limited

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Share Scheme

Option Scheme

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Signing page

The agreement

Scheme implementation agreement

Date ► 13 February 2012

Between the parties

Padbury

Padbury Mining Limited

ACN 009 076 242 of 15 Colin Street, West Perth, Western Australia
6005

(Padbury)

Aurium

Aurium Resources Limited

ACN 123 821 929 of 15 Colin Street, West Perth, Western Australia
6005

(Aurium)

Background

- 1 Aurium and Padbury have agreed that Padbury will acquire Aurium by means of schemes of arrangement under Part 5.1 of the Corporations Act between Aurium and Aurium Shareholders, and Aurium and Aurium Listed Optionholders.
 - 2 Aurium and Padbury have agreed in good faith to implement the schemes of arrangement on the terms of this agreement.
-

The parties agree

as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

1 Definitions and interpretation

1.1 Agreement components

This agreement includes any schedule.

1.2 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
ASIC Review Period	the period from the date on which the draft of the Scheme Booklet is submitted by Aurium to ASIC to the date on which ASIC confirms that it has no objection to the form of the Scheme Booklet.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Aurium Board	the board of directors of Aurium.
Aurium Fully Paid Share	a fully paid ordinary share in the capital of Aurium.
Aurium Listed Option	an option issued by Aurium that has an expiry date of 30 September 2012 and an exercise price of \$0.035 and is quoted on the ASX and gives the holder of the option the right to subscribe for one Aurium Fully Paid Share.
Aurium Listed Optionholder	each person who is registered as the holder of an Aurium Listed Option.
Aurium Options	the Aurium Listed Options and the Aurium Unlisted Options (each of which is an Aurium Option).
Aurium Partly Paid Share	a partly paid ordinary share in the capital of Aurium issued in November 2009 at an issue price of \$0.0001 each and convertible to an Aurium Fully Paid Share upon a further payment of \$0.0199.

Aurium Shares	the Aurium Fully Paid Shares and the Aurium Partly Paid Shares (each of which is an Aurium Share).
Aurium Shareholder	each person who is registered as the holder of Aurium Shares.
Aurium Unlisted Options	<p>the following unlisted options issued by Aurium:</p> <ol style="list-style-type: none">options expiring on 1 September 2012 with an exercise price of \$0.08 and giving the holder of the option the right to subscribe for one Aurium Share; andoptions expiring on 1 September 2013 with an exercise price of \$0.11 and giving the holder of the option the right to subscribe for one Aurium Share.
Business Day	a weekday on which trading banks are open for business in Perth, Western Australia.
Competing Transaction	<p>An expression of interest, proposal, offer, transaction or arrangement pursuant to which a person other than Padbury will, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed:</p> <ol style="list-style-type: none">acquire (whether directly or indirectly) or become the holder of, or otherwise acquire or have an economic interest in all or a substantial part of the business of Aurium or any of its subsidiaries;acquire a relevant interest in, or become the holder of, or otherwise acquire, have a right or obligation to acquire or have an economic interest, directly or indirectly, in 10% or more of Aurium's voting shares;acquire control (as determined in accordance with section 50AA of the Corporations Act) of Aurium or any of its subsidiaries;otherwise acquire or merge with Aurium; orenter into any agreement, arrangement or understanding requiring it to abandon, or otherwise fail to proceed with, the or any aspect of the Transaction, <p>whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, share issue, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.</p>
Confidentiality Agreement	the agreement dated 15 November 2011 between Aurium and Padbury as amended and extended from time to time.
Corporations Act	the <i>Corporations Act 2001</i> .
Court	the Supreme Court of Western Australia.
Deed Polls	the Share Deed Poll and the Option Deed Poll.

Effective	when used in relation to a Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to a Scheme.
End Date	30 June 2012.
Exclusivity Period	the period from and including the date of this agreement to the earlier of: 1 the termination of this agreement in accordance with its terms; and 2 the End Date.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.
Independent Expert	the independent expert in respect of the Schemes appointed by Aurium.
Implementation Date	the fifth Business Day after the Record Date.
Indemnified Parties	Aurium and its directors and officers.
Ineligible Foreign Optionholder	a Scheme Optionholder whose address as shown in the register of optionholders of Aurium is a place outside Australia and its external territories or New Zealand and other jurisdictions agreed in writing between the parties.
Ineligible Foreign Shareholder	a Scheme Shareholder whose address as shown in the register of members of Aurium is a place outside Australia and its external territories or New Zealand and other jurisdictions agreed in writing between the parties.
Intellectual Property	all items of intangible property and includes trademarks and service marks (whether or not registered or registration has been applied for), domain names, trade names, business names, designs, brand names, patents, patent applications, inventions (whether or not patented), trade secrets and copyrights (whether or not registered or registration has been applied for).
Listing Rules	the official listing rules of the ASX.
New Padbury Options	the options over unissued Padbury Shares to be issued by Padbury under the Option Scheme as the Option Scheme Consideration, with an exercise price of \$0.02 and an expiry date of 30 June 2014 and with such other terms as are set out in the Option Scheme (with such amendments as agreed between Padbury and Aurium as are necessary for the New Padbury Options to be quoted on ASX) and that, subject to ASX approval, will be quoted on ASX.

New Padbury Shares	the Padbury Shares to be issued under the Share Scheme as the Share Scheme Consideration.
Option Deed Poll	a deed poll in favour of the Scheme Optionholders substantially in the form of Schedule 5.
Option Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Aurium and Aurium Listed Optionholders as described in clause 4.4 and substantially in the form of Schedule 3.
Option Scheme Consideration	the consideration to be provided to Aurium Listed Optionholders in consideration for the transfer of their Aurium Listed Options to Padbury being, 1 New Padbury Option for each Aurium Listed Option held by a Scheme Optionholder at the Record Date.
Option Scheme Meeting	the meeting of Aurium Listed Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act.
Padbury Board	the board of directors of Padbury.
Padbury Information	information regarding Padbury and its subsidiaries provided by Padbury to Aurium in writing for inclusion in the Scheme Booklet.
Padbury Share	a fully paid ordinary share in the capital of Padbury.
Prescribed Occurrence	<p>(other than as required by this agreement or the Schemes) the occurrence of any of the following between the date of this agreement and 5.00pm on the day before the Second Court Date:</p> <ol style="list-style-type: none">1 Aurium converting all or any of its shares into a larger or smaller number of shares;2 Aurium or a subsidiary of Aurium resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;3 Aurium or a subsidiary of Aurium:<ul style="list-style-type: none">• entering into a buy-back agreement; or• resolving to approve the terms of a buy-back agreement under the Corporations Act;4 Aurium declaring, paying or distributing any dividend, bonus or other share of its profits or assets;5 Aurium or a subsidiary of Aurium issuing shares (other than on exercise of an Aurium Option), or granting an option over its shares, or agreeing to make such an issue or grant such an option;6 Aurium or a subsidiary of Aurium issuing or agreeing to issue, securities convertible into shares or debt securities;7 Aurium or a subsidiary of Aurium making any change to its constitution;8 Aurium or a subsidiary of Aurium disposing, or agreeing to dispose, of

the whole, or a substantial part, of its business or property;

- 9 Aurium or a subsidiary of Aurium:
- acquiring or disposing of;
 - agreeing to acquire or dispose of; or
 - offering, proposing, announcing a bid or tendering for, any business, assets, entity or undertaking;
- 10 Aurium or a subsidiary of Aurium charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
- 11 Aurium or a subsidiary of Aurium creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property otherwise than:
- in the ordinary course of business; and
 - a lien which arises by operation of law or legislation securing an obligation that is not yet due;
- 12 Aurium or a subsidiary of Aurium:
- entering into any contract or commitment requiring payments by Aurium and its subsidiary;
 - waiving any material third party default; or
 - accepting as a settlement or compromise of a material matter less than the full compensation due to Aurium or a subsidiary of Aurium,
- otherwise than in the ordinary course of business;
- 13 Aurium or a subsidiary of Aurium resolving that it be wound up;
- 14 a liquidator or provisional liquidator of Aurium or of a subsidiary of Aurium being appointed;
- 15 the Court making an order for the winding up of Aurium or of a subsidiary of Aurium;
- 16 an administrator of Aurium or of a subsidiary of Aurium being appointed under the Corporations Act;
- 17 Aurium or a subsidiary of Aurium being deregistered as a company or otherwise dissolved;
- 18 Aurium or a subsidiary of Aurium executing a deed of company arrangement;
- 19 a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of Aurium or of a subsidiary of Aurium;
- 20 Aurium or a subsidiary of Aurium entering into or materially amending any employment, consulting, severance or similar agreement or arrangement with officers, directors or other executives of Aurium or a subsidiary of Aurium or otherwise materially increasing compensation or benefits for any of the above other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this agreement;
- 21 Aurium or a subsidiary of Aurium entering into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this agreement;
- 22 Aurium or a subsidiary of Aurium taking or omitting to take action which would result in a breach of law material to Aurium and its
-

subsidiaries;

- 23 Aurium or a subsidiary of Aurium licensing, selling or otherwise giving any third party rights under any of the material Intellectual Property that Aurium or a subsidiary of Aurium owns or has a right to use, other than in the ordinary course of business or pursuant to contractual requirements in effect on the date of this agreement;
- 24 Aurium or a subsidiary of Aurium changing any accounting policy applied by them to report their financial position; or
- 25 Aurium or a subsidiary of Aurium entering into or resolving to enter into a transaction with any related party of Aurium as defined in section 228 of the Corporations Act.

Record Date 5.00pm on the fifth Business Day after the date on which a Scheme becomes Effective.

Regulatory Approvals has the meaning given to that term in clause 3.1(a) and clause 3.2(b) (as the context requires).

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Sale Agent the agent appointed in relation to the Share Scheme and the Option Scheme by Aurium to sell the New Padbury Shares and the New Padbury Options that would have otherwise been issued to Ineligible Foreign Shareholders and Ineligible Foreign Optionholders.

Schemes the Share Scheme and/or the Option Scheme (as applicable).

Scheme Booklet the information described in clause 6.2(c) to be approved by the Court and despatched to the Aurium Shareholders and Aurium Listed Optionholders and which must include, without limitation, the Schemes, an explanatory statement complying with the requirements of the Corporations Act, an independent expert's report (either a full form or concise version), notices of meeting and proxy forms in the form the parties agree.

Scheme Meetings the Share Scheme Meeting and the Option Scheme Meeting.

Scheme Optionholder an Aurium Listed Optionholder as at the Record Date.

Scheme Shareholder an Aurium Shareholder as at the Record Date.

Second Court Date the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Schemes is heard.

Share Deed Poll	a deed poll in favour of the Scheme Shareholders substantially in the form of Schedule 4.
Share Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Aurium and the Aurium Shareholders as described in clause 4 and substantially in the form of Schedule 1.
Share Scheme Consideration	<ol style="list-style-type: none"> 1 for each Aurium Fully Paid Share held by a Scheme Shareholder at the Record Date – 3 Padbury Shares; and 2 for every 2.5 Partly Paid Aurium Shares held by a Scheme Shareholder at the Record Date – 1 Padbury Share.
Share Scheme Meeting	the meeting of Aurium Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.
Supplementary Independent Expert's Report	means any update to the Independent Expert's Report or any supplementary report prepared by the Independent Expert.
Superior Proposal	<p>a publicly announced bona fide proposal from a person other than Padbury as to a Competing Transaction (and not resulting from a breach by Aurium of its obligations under this agreement) which the Aurium Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:</p> <ol style="list-style-type: none"> 1 reasonably capable of being completed on a timely basis taking into account all aspects of the Competing Transaction, including without limitation, having regard to legal, regulatory and financial matters including any conditions precedent; and 2 superior to the Scheme Shareholders than the Share Scheme, taking into account all terms and conditions of the Competing Transaction.
Timetable	the timetable set out in Schedule 1, as may be amended from time to time by agreement between the parties.
Transaction	the acquisition of Aurium by Padbury through implementation of the Schemes in accordance with the terms of this agreement.
Transaction Documents	this agreement and the Scheme Booklet.

1.3 Interpretation

In this agreement, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;

- (c) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this agreement, and a reference to this agreement includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$' or 'dollar' is to Australian currency;
- (j) a reference to any time is a reference to that time in Perth, Western Australia;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this agreement; and
- (l) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Agreement to proceed with the Transaction

The parties will undertake the Transaction on the terms of this agreement.

3 Conditions precedent

3.1 Conditions precedent to Share Scheme

Subject to this clause 3, the obligations of Padbury under clause 4.2 are subject to the satisfaction of each of the following conditions precedent to the extent and in the manner set out in clauses 3.3 and 3.4.

- (a) **Regulatory Approvals:** Subject to clause 3.7, ASIC and the ASX issue or provide any consents or approvals or do other acts necessary or desirable to implement the transactions contemplated by clause 4 (in so far as that clause relates to the Share Scheme) before 5.00pm on the day before the Second Court Date.
- (b) **Shareholder approval:** Aurium Shareholders approve the Share Scheme at the Share Scheme Meeting by the requisite majorities under the Corporations Act.

- (c) **Court approval:** The Court approves the Share Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (d) **Restraints:** No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the Share Scheme is in effect at 5.00pm on the day before the Second Court Date.
- (e) **Prescribed Occurrence and breach of obligations:**
- (1) No Prescribed Occurrence has occurred; and
 - (2) Aurium is not in breach, in any material respect, of its obligations under clause 6 or any of its other obligations under this agreement,
- at 5.00pm on the day before the Scheme Meetings and at 5.00pm on the day before the Second Court Date.
- (f) **Aurium's representations and warranties:** The representations and warranties of Aurium set out in this agreement that are qualified as to materiality are true and correct, and the representations of Aurium set out in this agreement that are not so qualified are true and correct in all material respects, in each case as of the date of this agreement and as at 5.00pm on the day before the Second Court Date as though made on and as of that time, except to the extent any such representation or warranty expressly relates to an earlier date (in which case, as of that date).
- (g) **Continuous disclosure:** Between the date of this agreement and 5.00pm on the day before the Second Court Date, Padbury does not become aware of any matter, event, action or circumstance:
- (1) which is materially adverse in relation to Aurium or its Related Bodies Corporate;
 - (2) in respect of which Aurium has not complied with its disclosure obligations under Listing Rule 3.1 at any time; and
 - (3) which was not previously disclosed to Padbury.
- (h) **Independent Expert recommendation:** The Independent Expert opines that the Share Scheme is in the best interests of Aurium Shareholders (and does not change such opinion prior to the Second Court Date).
- (i) **Directors' recommendation:** Between the date of this agreement and the Scheme Meetings, the directors of Aurium do not change or withdraw their recommendation to Aurium Shareholders to vote in favour of the Share Scheme.

3.2 Conditions precedent to Option Scheme

Subject to this clause 3, the obligations of Padbury under clause 4.5 are subject to the satisfaction of each of the following conditions precedent to the extent and in the manner set out in clauses 3.3 and 3.4.

- (a) **Share scheme:** the Share Scheme becomes Effective.
- (b) **Regulatory Approvals:** Subject to clause 3.7, ASIC and the ASX issue or provide any consents or approvals or do other acts necessary or desirable to implement the transactions contemplated by clause 4 (in so far as that clause relates to the Option Scheme) before 5.00pm on the day before the Second Court Date.
- (c) **Optionholder approval:** Aurium Listed Optionholders approve the Option Scheme at the Option Scheme Meeting by the requisite majorities under the Corporations Act.
- (d) **Court approval:** The Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act.

- (e) **Restraints:** No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the Option Scheme is in effect at 5.00pm on the day before the Second Court Date.
- (f) **Prescribed Occurrence and breach of obligations:**
 - (1) No Prescribed Occurrence has occurred; and
 - (2) Aurium is not in breach, in any material respect, of its obligations under clause 6 or any of its other obligations under this agreement,

at 5.00pm on the day before the Scheme Meetings and at 5.00pm on the day before the Second Court Date.
- (g) **Aurium's representations and warranties:** The representations and warranties of Aurium set out in this agreement that are qualified as to materiality are true and correct, and the representations of Aurium set out in this agreement that are not so qualified are true and correct in all material respects, in each case as of the date of this agreement and as at 5.00pm on the day before the Second Court Date as though made on and as of that time, except to the extent any such representation or warranty expressly relates to an earlier date (in which case, as of that date).
- (h) **Independent Expert recommendation:** The Independent Expert opines that the Option Scheme is in the best interests of Aurium Listed Optionholders (and does not change such opinion prior to the Second Court Date).
- (i) **Directors' recommendation:** Between the date of this agreement and the Scheme Meetings, the directors of Aurium do not change or withdraw their recommendation to Aurium Listed Optionholders to vote in favour of the Option Scheme.

3.3 Best endeavours

Aurium and Padbury must each use their best endeavours to procure that:

- (a) each of the conditions precedent in clause 3.1 and clause 3.2 are satisfied as soon as practicable after the date of this agreement; and
- (b) there is no occurrence within the control of Aurium or Padbury or their subsidiaries that would prevent the conditions precedent in clause 3.1 or clause 3.2 being satisfied (as the context requires).

3.4 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(b) and 3.1(c) and 3.2(c) and 3.2(d) cannot be waived.
- (b) The remaining conditions precedent in clauses 3.1 and 3.2 are for the sole benefit of Padbury and may only be waived by Padbury (in its absolute discretion) in writing.
- (c) If Padbury waives the breach or non-fulfilment of any of the conditions precedent in clause 3.1 or clause 3.2 that it is permitted to waive, that waiver does not prevent it from suing Aurium for any breach of this agreement that resulted in the breach or non-fulfilment of the condition precedent.

3.5 Consultation on failure of condition precedent

- (a) **Consultation:** If:
 - (1) any event occurs which would prevent any of the conditions precedent in clause 3.1 or clause 3.2 being satisfied, or there is an occurrence that is reasonably likely to prevent the condition precedent being satisfied by the date

specified in this agreement for its satisfaction (except as the result of a deliberate action of Aurium); or

- (2) the Share Scheme has not become Effective by the End Date, the parties must consult in good faith to:
 - (3) determine whether the Transaction may proceed by way of alternative means or methods;
 - (4) change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme or adjourning that application (as applicable) to another date agreed by Aurium and Padbury (being a date no later than 5 Business Days before the End Date); or
 - (5) extend the relevant date or End Date.
- (b) **Termination:** If the parties are unable to reach agreement under clause 3.5(a) within 5 Business Days of becoming aware of the relevant occurrence or relevant date or by the End Date, then unless that condition precedent is waived by Padbury as provided in clause 3.4, either party may terminate this agreement without any liability to the other party because of that termination, unless the relevant occurrence or the failure of the condition precedent to be satisfied, or failure of the Schemes to become Effective, arises out of a breach by the terminating party of clause 6 or this clause 3.

3.6 Certain notices

- (a) **Notice of failure of condition precedent:** If, before the time specified for satisfaction of a condition precedent, any event that will prevent that condition precedent being satisfied occurs, the party with knowledge of that event must immediately give the other party written notice of that event.
- (b) **Waiver:** A waiver of a breach or non-fulfilment in respect of one condition precedent does not constitute:
 - (1) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same event.
 - (2) a waiver of breach or non-fulfilment of that condition precedent resulting from any other event.
- (c) **Notice of changes:** Aurium and Padbury must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
 - (1) a representation or warranty provided in this agreement to be false;
 - (2) a breach or non-fulfilment of any of the conditions precedent; or
 - (3) a material breach of this agreement.

3.7 Regulatory approval

For the purposes of clause 3.1(a) and clause 3.2(b), a Regulatory Approval will be regarded as having been obtained even though a condition has been attached to that Regulatory Approval, if the parties agree to treat the approval as having been obtained.

4 Transaction steps

4.1 Share Scheme

Aurium must propose a scheme of arrangement under which:

- (a) all of the Aurium Shares held by Scheme Shareholders will be transferred to Padbury; and
- (b) the Scheme Shareholders will be entitled to receive the Share Scheme Consideration for each Aurium Share held at the Record Date.

4.2 Share Scheme Consideration

Padbury undertakes and warrants to Aurium (in Aurium's own right and separately as trustee or nominee for each of the Scheme Shareholders) that in consideration of the transfer to Padbury of each Aurium Share held by a Scheme Shareholder at the Record Date under the terms of the Scheme, Padbury will on the Implementation Date:

- (a) accept that transfer; and
- (b) provide the Share Scheme Consideration in accordance with the Share Scheme.

4.3 Ineligible Foreign Shareholders

Unless Padbury and Aurium are satisfied, acting reasonably, that the laws of all relevant jurisdictions permit the issue of New Padbury Shares to an Ineligible Foreign Shareholder either unconditionally or after compliance with requirements that are not unduly onerous, Padbury has no obligation to allot or issue New Padbury Shares to the Ineligible Foreign Shareholder under the Share Scheme and, instead, must procure that the New Padbury Shares that would have otherwise been issued to the Ineligible Foreign Shareholder are issued to the Sale Agent for sale, and the net proceeds of sale will be distributed amongst those Ineligible Foreign Shareholders in accordance with the Share Scheme.

4.4 Option Scheme

Aurium must propose the Option Scheme in the form set out in Schedule 3 or such other form as the parties agree in writing, under which, subject to both of the Schemes becoming Effective, all of the Aurium Listed Options will be transferred to Padbury and the Scheme Optionholders will receive the Option Scheme Consideration for each Aurium Listed Option held at the Record Date.

4.5 Option Scheme Consideration

Padbury undertakes and warrants to Aurium (in Aurium's own right and separately as trustee or nominee for each of the Scheme Optionholders) that, in consideration of the transfer to Padbury of each Aurium Listed Option held by a Scheme Optionholder at the Record Date under the terms of the Option Scheme, Padbury will, on the Implementation Date, provide or procure the provision of the Option Scheme Consideration in accordance with the Option Scheme.

4.6 Ineligible Foreign Optionholders

Unless Padbury and Aurium are satisfied, acting reasonably, that the laws of all relevant jurisdictions permit the issue of New Padbury Options to an Ineligible Foreign Optionholder either unconditionally or after compliance with requirements that are not unduly onerous, Padbury has no obligation to allot or issue New Padbury Options to the

Ineligible Foreign Optionholder under the Option Scheme and, instead, must procure that the New Padbury Options that would have otherwise been issued to the Ineligible Foreign Optionholder are issued to the Sale Agent for sale, and the net proceeds of sale will be distributed amongst those Ineligible Foreign Optionholders in accordance with the Option Scheme.

4.7 No amendment to Schemes

Aurium must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, either of the Schemes without the prior written consent of Padbury.

4.8 Aurium Unlisted Options

- (a) Aurium warrants that the holders of Aurium Unlisted Options have confirmed to Aurium that they will not exercise their Aurium Unlisted Options at any time after 12.00 pm on the Business Day before the Record Date up until their expiry date, such that the Aurium Unlisted Options will lapse immediately after their expiry date.
- (b) Aurium must ensure that each holder of Aurium Unlisted Options provides a written undertaking to Padbury within 5 Business Days after the date of this agreement that they will not exercise any of their Aurium Unlisted Options at any time after 12.00 pm on the Business Day before the Record Date up until their expiry date.

5 Termination

5.1 Termination

Without prejudice to any other rights of termination under this agreement, either party may terminate this agreement by written notice to the other party at any time before 5.00pm on the day before the Second Court Date if:

- (a) the other party is in material breach of any provision of this agreement (including any material breach of the representations and warranties given by that other party in clause 7), the party wishing to terminate has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate, and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) from the time the notice is given; or
- (b) a Court or Government Agency has taken any action permanently restraining or otherwise prohibiting the Transaction, or has refused to do any thing necessary to permit the Transaction, and the action or refusal has become final and cannot be appealed.

5.2 Effect of termination

If this agreement is terminated by either Aurium or Padbury under clauses 3 or 5, except to the extent that the termination results from a breach by either party of its obligations under this agreement, this agreement will become void and have no effect, without any liability or obligation on the part of Aurium or Padbury, other than the provisions of clauses 7.5, 7.6, 9, 12.1 and 12.2, which will remain in force after termination.

6 Implementation

6.1 Obligations of both parties

Without limiting the general nature of clause 2, each party must:

(a) **Regulatory approvals**

- (1) promptly apply for all relevant Regulatory Approvals specified in clause 3.1(a) and 3.2(b) and provide to the other a copy of all those applications;
- (2) take all steps it is responsible for as part of the approval process, including responding to requests for information at the earliest practicable time; and
- (3) provide the other party with all information reasonably requested in connection with the applications for Regulatory Approval,

but neither party is required to take any action which would require the divestiture of material assets of Aurium or Padbury and their subsidiaries;

- (b) **Certificate:** at the hearing on the Second Court Date, provide to the Court a certificate confirming whether or not the conditions precedent in clause 3.1 and 3.2 (other than the conditions in clause 3.1(c) and clause 3.2(d)) have been satisfied or waived in accordance with this agreement. A draft of such certificate shall be provided by each party to the other party by 5.00 pm on the Business Day prior to the Second Court Date; and
- (c) **Timing:** consult with each other regularly in relation to the Timetable for performing their respective obligations and use all reasonable endeavours and commit necessary resources so as to implement the Transaction as soon as reasonably practicable and substantially in accordance with the Timetable.

6.2 Aurium's obligations

Without limiting the general nature of clause 2, Aurium must take all necessary steps to implement the Transaction as soon as is reasonably practicable, including doing any acts on behalf of Aurium Shareholders and Aurium Listed Optionholders, and including each of the following:

- (a) **recommendation of the Schemes:** state, when the Transaction is announced (on the basis of representations made to it by each of the Aurium directors) that the Aurium directors present at the Board meeting at which it was resolved to enter into this agreement, unanimously:
- (1) consider that the Share Scheme is in the best interests of Aurium Shareholders;
 - (2) recommend that Aurium Shareholders vote in favour of the Share Scheme at the Share Scheme Meeting and approve the Share Scheme;
 - (3) each director of Aurium that holds or controls Aurium Shares intends to cause those Aurium Shares to be voted in favour of the Share Scheme;
 - (4) consider that the Option Scheme is in the best interests of Aurium Listed Optionholders;
 - (5) recommend that Aurium Listed Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting and approve the Option Scheme; and
 - (6) each director of Aurium that holds or controls Aurium Listed Options intends to cause those Aurium Listed Options to be voted in favour of the Option Scheme,
- subject to there being no Superior Proposal and, in respect of the:

- (1) Share Scheme, subject to the Independent Expert concluding that the Share Scheme is in the best interests of Aurium Shareholders; and
 - (2) Option Scheme, subject to the Independent Expert concluding that the Option Scheme is in the best interests of Aurium Listed Optionholders;
- (b) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report for inclusion in the Scheme Booklet (including any Supplementary Independent Expert's reports);
- (c) **Scheme Booklet:** prepare a Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, ASIC Regulatory Guide 60 (and all other regulatory guides) and the Listing Rules in consultation with Padbury as to the content and presentation of the Scheme Booklet. This consultation must include allowing Padbury reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet prior to lodgement with ASIC and obtaining Padbury's consent to the inclusion of the Padbury Information and is subject to clause 6.3. The Scheme Booklet must also:
- (1) subject to clause 6.7, include a statement by the Aurium Board recommending that Aurium Shareholders and Aurium Listed Optionholders vote in favour of the Schemes;
 - (2) include a statement that Aurium is responsible for the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Padbury Information and the Independent Expert's Report; and
 - (3) subject to clause 6.3(c) and provided it has consented to the form and content of the information in accordance with clause 6.3(c) include a statement that Padbury is responsible for the Padbury Information (and no other part of the Scheme Booklet);
- (d) **update Scheme Booklet:** promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been despatched and until the date of the Scheme Meetings that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (e) **section 411(17)(b) statement:** apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Schemes;
- (f) **approval of ASIC review draft:** as soon as practicable after preparation of an advanced draft of the Scheme Booklet for lodgement with ASIC, convene a meeting of the Aurium Board for the purpose of approving the Scheme Booklet for lodgement with ASIC;
- (g) **lodgement of draft Scheme Booklet with ASIC:** provide an advanced draft of the Scheme Booklet in a form reasonably acceptable to both parties to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and liaise with ASIC during the ASIC Review Period;
- (h) **ASIC Review Period:** during the ASIC Review Period, keep Padbury informed of any matters raised by ASIC in relation to the Scheme Booklet, and use reasonable endeavours, in co-operation with Padbury, to resolve any such matters;
- (i) **approval of Scheme Booklet:** as soon as practicable after the end of the ASIC Review Period, convene a meeting of the Aurium Board for the purpose of approving the Scheme Booklet for despatch to Aurium Shareholders and Aurium Listed Optionholders;
- (j) **despatch Scheme Booklet:** despatch the Scheme Booklet, which complies with clause 6.2(c), in respect of the Schemes to Aurium Shareholders and Aurium Listed Optionholders;

- (k) **court direction:** apply to the Court for orders directing Aurium to convene the Scheme Meetings;
- (l) **Scheme Meetings:** convene the Scheme Meetings to approve the Schemes, as directed by the Court;
- (m) **shareholder approval:** seek the approval of Aurium Shareholders for the Share Scheme;
- (n) **optionholder approval:** seek the approval of Aurium Listed Optionholders for the Option Scheme;
- (o) **Court approval:** apply to the Court for orders approving the Schemes as approved by the Aurium Shareholders and Aurium Listed Optionholders respectively at the Scheme Meetings;
- (p) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order approving the Schemes on the day such office copy is received (or such later date as agreed in writing between the parties) and:
 - (1) as soon as practicable thereafter, determine who are the Scheme Shareholders and Scheme Optionholders, and their entitlements to the Share Scheme Consideration and Option Scheme Considerations respectively as at the Record Date;
 - (2) on the Implementation Date register all transfers of Aurium Shares and Aurium Listed Options to Padbury; and
 - (3) do all other things contemplated by or necessary to lawfully give effect to the Schemes and the orders of the Court approving the Schemes;
- (q) **access to information:** provide to Padbury and its authorised representatives reasonable access to employees, offices and other facilities, and to the books and records, of Aurium and its subsidiaries for the purpose of implementing the Transaction;
- (r) **proxy information:** between the date the Scheme Booklet is despatched and the day prior to the Scheme Meetings, on a daily basis, or otherwise as reasonably requested by Padbury, provide Padbury with details of proxies received in relation to the resolutions to be considered at the Scheme Meetings;
- (s) **Prescribed Occurrences:** between the date of this agreement and 5.00pm on the day before the Second Court Date, ensure that no Prescribed Occurrences occur except in accordance with this agreement; and
- (t) **time of the essence:** to the extent within the control of Aurium, ensure that the Implementation Date occurs in accordance with the timing set out in the Timetable. Aurium agrees the timing in the Timetable is of the essence and that a material breach of this clause 6.2(t) will entitle Padbury to terminate this agreement by written notice to Aurium.

6.3 Disagreement on content of Scheme Booklet

If the parties disagree on the form or content of the Scheme Booklet:

- (a) they must consult in good faith to try to settle an agreed form of the Scheme Booklet; and
- (b) failing agreement within 5 Business Days, the dispute must be referred to the Chairmen of Padbury and Aurium;
- (c) if within 5 Business Days of the referral to the Chairmen there is still no agreement between the parties, the final form and content of the Scheme Booklet must be determined by Aurium, acting reasonably and if Padbury disagrees with the final form and content:
 - (1) Aurium must include a statement to that effect in the Scheme Booklet; and

- (2) if Padbury's concerns relate to Padbury Information, Aurium must include a statement that Padbury takes no responsibility for the relevant form or content to the extent that Padbury disagrees with the final form or content.

6.4 Padbury's obligations

Without limiting the general nature of clause 2, Padbury must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation of the Transaction on a basis consistent with this agreement, and in particular Padbury must:

- (a) **Padbury Information:** prepare and provide to Aurium the Padbury Information for inclusion in the Scheme Booklet;
- (b) **update Padbury Information:** promptly provide to Aurium any information that arises after the Scheme Booklet has been despatched and until the date of the Scheme Meetings that may be necessary to ensure that the Scheme Booklet, in relation to the Padbury Information contained in it, does not, contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (c) **Independent Expert's Report:** provide any assistance or information reasonably requested by Aurium or by the Independent Expert in connection with the preparation of the Independent Expert's Report or any Supplementary Independent's Expert Report if required;
- (d) **assistance:** provide any assistance or information reasonably requested by Aurium in connection with the preparation of the Scheme Booklet and any other document to be sent to Aurium Shareholders and Aurium Listed Optionholders in order to facilitate shareholder approval of the Share Scheme, and Aurium Listed Optionholder approval of the Option Scheme;
- (e) **meeting of Padbury Board:** as soon as practicable after the preparation of the advanced draft of the Scheme Booklet for lodgement with ASIC and as soon as practicable after the end of the ASIC Review Period and finalisation of the Scheme Booklet to be despatched to shareholders and Aurium Listed Optionholders, obtain Padbury Board approval of those sections of the Scheme Booklet that comprise the Padbury Information;
- (f) **Deed Polls:** on or before the Business Day before the First Court Date, execute the Deed Polls in favour of Scheme Shareholders and Scheme Optionholders respectively;
- (g) **Scheme Consideration:** if the Share Scheme becomes Effective, provide the New Padbury Shares that comprise the Scheme Consideration in accordance with the Share Deed Poll on the Implementation Date;
- (h) **Option Scheme Consideration:** if the Option Scheme becomes Effective, grant the New Padbury Options that comprise the Option Scheme Consideration in accordance with the Option Deed Poll on the Implementation Date;
- (i) **quotation of New Padbury Options:** make an application to the ASX for the official quotation of the New Padbury Options on the ASX as soon as practicable following the date of this agreement; and
- (j) **accuracy of Padbury Information:** confirm to Aurium the accuracy of the Padbury Information in the Scheme Booklet.

6.5 Conduct of business

From the date of this agreement up to and including the Implementation Date, Aurium and each of its Related Bodies Corporate must conduct their respective businesses in the ordinary and proper course of business and make all reasonable efforts to:

- (a) keep available the services of their officers and employees; and
- (b) preserve their relationships with customers, suppliers, licensors, licensees and others having business dealings with Aurium and any subsidiary of Aurium.

6.6 The Padbury and Aurium Board

- (a) Padbury must, as soon as practicable after the Scheme becomes Effective, ensure that Terry Quinn is appointed as Executive Chairman of Padbury. To avoid doubt, Gary Stokes will remain Managing Director of Padbury and William Zi Wei Han will remain as a director of Padbury.
- (b) Aurium must, as soon as practicable:
 - (1) after the Second Court Date, take all actions necessary to cause the appointment of that number of nominees of Padbury to the Aurium Board which gives those nominees acting together control of the Aurium Board; and
 - (2) after the Share Scheme Consideration has been paid, ensure that all directors on the Aurium Board other than the Padbury nominees and Terry Quinn resign.
- (c) Aurium represents and warrants to Padbury that each director of Aurium, other than Terry Quinn, has confirmed that he will resign as soon as practicable after the Scheme becomes Effective, provided that a proper board is constituted at all times.

6.7 Aurium Board recommendation

- (a) Subject to clause 6.7(b), Aurium must procure (so far as it is within its power and control to do so) that the Aurium Board unanimously recommends that Aurium Shareholders and Aurium Listed Optionholders vote in favour of the Share Scheme and Option Scheme in the absence of a Superior Proposal.
- (b) Aurium must procure that the Aurium Board collectively, and the members of the Aurium Board individually, give the recommendation set out in clause 6.7(a) and do not change, withdraw or modify its or their recommendation in favour of a Scheme unless:
 - (1) the Aurium Board determines in good faith (after receiving independent legal advice from its external legal advisors) that, by virtue of their fiduciary duties, they are required to change, withdraw or modify their recommendation;
 - (2) in respect of the recommendation to Aurium Shareholders to vote in favour of the Share Scheme only, in the Independent Expert's Report or any Supplementary Independent Expert's Reports, the Independent Expert does not opine that the Share Scheme is in the best interests of Aurium Shareholders;
 - (3) in respect of the recommendation to Aurium Listed Optionholders to vote in favour of the Option Scheme only, in the Independent Expert's Report or any Supplementary Independent Expert's Reports, the Independent Expert does not opine that the Option Scheme is in the best interests of Aurium Listed Optionholders;
 - (4) Padbury has materially breached any provision of this agreement, including if any Padbury Information or any representation by Padbury in clause 7.1 is or becomes materially misleading; or
 - (5) a Superior Proposal is announced which, at the conclusion of the period prescribed by clause 10.5(c), remains a Superior Proposal.
- (c) If any director of Aurium or the Aurium Board proposes to change its recommendation in accordance with clause 6.7(b):
 - (1) Aurium must notify Padbury in writing not less than 3 Business Days before the Aurium Board, or one or more Aurium directors, announces a change,

withdrawal or modification recommendation, that such a change, withdrawal or modification to the recommendation is to occur; and

- (2) the parties must consult in good faith to consider and determine whether the recommendation in place at that time can be maintained.

7 Representations and undertakings

7.1 Padbury's representations

Padbury represents and warrants to Aurium (in its own right and separately as trustee or nominee for each of the other Indemnified Parties) that:

- (a) the Padbury Information provided to Aurium for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that each of the Indemnified Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Schemes in accordance with the Corporations Act;
- (b) the Padbury Information provided under clause 6.4(a) in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Aurium Shareholders and Aurium Listed Optionholders, will not contain any statement which is materially misleading or deceptive including by way of omission from that statement;
- (c) Padbury will, as a continuing obligation, provide to Aurium all further or new information which arises after the Scheme Booklet has been despatched until the date of the Scheme Meetings which is necessary to ensure that there would be no breach of clause 7.1(b) if it applied as at the date on which that information arose;
- (d) the execution and delivery of this agreement has been properly authorised by all necessary corporate action of Padbury;
- (e) Padbury has full corporate power and lawful authority to execute, deliver and perform this agreement; and
- (f) this agreement does not conflict with or result in the breach of or default under Padbury's constitution or any other agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound.

7.2 Padbury's indemnity

Padbury agrees with Aurium (in its own right and separately as trustee or nominee for each of the other Indemnified Parties) to indemnify the Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which any of the Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties in clause 7.1.

7.3 Aurium's representations

Aurium represents and warrants to Padbury and its directors and officers (in its own right and separately as trustee or nominee for each of the Padbury directors and officers) that:

- (a) no information (other than the Padbury Information) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Aurium Shareholders and Aurium Listed Optionholders, will contain any statement which is materially misleading or deceptive, including by way of omission from that statement;
- (b) the execution and delivery of this agreement has been properly authorised by all necessary corporate action of Aurium;

- (c) Aurium has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
- (d) this agreement does not conflict with or result in the breach of or default under any provision of Aurium's constitution or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it is bound;
- (e) Aurium has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1 to withhold any material information from public disclosure; and
- (f) as at the date of this agreement there are:
 - (1) 301,800,002 Aurium Shares on issue;
 - (2) 108,800,000 Aurium Listed Options on issue;
 - (3) 70,000,000 Aurium Partly Paid Shares on issue; and
 - (4) 8,666,666 Aurium Unlisted Options on issue (comprising of 4,333,333 options expiring on 1 September 2012 with an exercise price of \$0.08 and 4,333,333 options expiring on 1 September 2013 with an exercise price of \$0.11).

7.4 Aurium's indemnity

Aurium agrees with Padbury (in its own right and separately as trustee or nominee for each of Padbury's directors and officers) to indemnify Padbury and its directors and officers from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Padbury or any of its directors or officers suffers, incurs or is liable for arising out of any breach of any of the representations and warranties in clause 7.3.

7.5 Survival of representations

Each representation and warranty in clauses 7.1 and 7.3:

- (a) is severable;
- (b) survives the termination of this agreement; and
- (c) is given with the intention that liability under it is not confined to breaches which are discovered before the date of termination of this agreement.

7.6 Survival of indemnities

Each indemnity in this agreement (including those in clauses 7.2 and 7.4):

- (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) survives the termination of this agreement.

8 Public announcements

8.1 Announcement of Schemes

Immediately after the execution of this agreement, Aurium and Padbury must issue a joint public announcement in an agreed form, including the matters contemplated in clause 6.2(a).

8.2 Public announcement and submissions

- (a) Subject to clause 8.3, no public announcement in connection with any Transaction Document or the Schemes may be made other than in a form approved by both parties.
- (b) No submission for any Regulatory Approval under this agreement may be made by one party without reasonable consultation with the other party.
- (c) Each party must use all reasonable endeavours to provide the approval and constructively participate in the consultation contemplated by clauses 8.2(a) and (b) as soon as practicable.

8.3 Required disclosure

If a party is required by law or the Listing Rules to make any announcement or disclosure relating to matter the subject of a Transaction Document or the Schemes, it may do so only after it has given the other party at least 1 Business Day notice (or any lesser period of notice required or permitted by the effect of a legal obligation), but in any event prior notice must be given to the other party and the party must consult to the fullest extent possible with the other party regarding the form and content of the announcement or disclosure.

9 Confidentiality

9.1 Confidentiality Agreement

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party before or after the date of this agreement.

9.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this agreement.

9.3 Takeover bid

Despite any provision of the Confidentiality Agreement, Padbury is not precluded from making a takeover bid for Aurium if a third party makes an unsolicited offer for Aurium.

10 No-shop and no-talk obligation

10.1 No-shop obligation

During the Exclusivity Period, Aurium must ensure that neither it, nor any of its related bodies corporate and their employees, officers, agents, advisers or financiers directly or indirectly solicit, invite, encourage (including by way of providing information concerning Aurium to any person), initiate or participate in any negotiations or discussions, or communicate any intention to do any of these things, in respect of or in response to any expression of interest, offer or proposal by any person other than Padbury to enter into, or otherwise effect or pursue a Competing Transaction.

10.2 No-talk obligation

During the Exclusivity Period, Aurium must ensure that neither it nor any of its related bodies corporate and their employees, officers, agents, advisers or financiers enter into, permit, continue or participate in, negotiations or discussions with any person other than Padbury regarding a Competing Transaction, even if:

- (a) the Competing Transaction was not directly or indirectly solicited, invited, initiated, or encouraged by Aurium or any of its employees, officers or agents; or
- (b) the Competing Transaction has been publicly announced.

10.3 Fiduciary carve out

- (a) Subject to clause 10.5, Aurium may undertake any action that would otherwise be prohibited by clause 10.1 in relation to a bona fide Competing Transaction that was not solicited by it and was not otherwise brought about as a result of any breach by it of its obligations under this clause 10, where its board of directors, acting in good faith, determines:
- (b) after having taken advice from Aurium's legal advisor, that not undertaking that act would involve a breach of the statutory or fiduciary duties owed by any director or would otherwise be unlawful; and
- (c) after having taken advice from Aurium's legal advisor and financial advisor, that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal.

10.4 Notification of approaches

- (a) During the Exclusivity Period, Aurium must notify Padbury promptly if it becomes aware of any:
 - (1) negotiations or discussions;
 - (2) approach or attempt to initiate any negotiations or discussions; or
 - (3) intention to make such an approach or attempt to initiate any negotiations or discussions,

in respect of any expression of interest, offer or proposal of a kind referred to in clause 10.1.

- (b) A notice given under this clause 10.4 must set out all relevant details of the relevant event, including the identity of the person or persons taking any action referred to in clause 10.4(a)(1) or 10.4(a)(2) and the terms and conditions of any Competing Transaction or any proposed Competing Transaction (to the extent known).

10.5 Acting on a Competing Transaction

During the Exclusivity Period, Aurium may only enter into any legally binding agreement in relation to a Competing Transaction, and the Aurium Board may only publicly recommend a Competing Transaction, if:

- (a) Aurium gives Padbury a notice under clause 10.4;
- (b) the Aurium Board, acting in good faith, determines:
 - (1) after consultation with its financial advisors, that the Competing Transaction is a Superior Proposal (taking into account all aspects of the Competing Transaction and the Transaction); and
 - (2) after receiving independent legal advice from its external advisers, that the Aurium Board is required to respond to the Competing Transaction in order to comply with its fiduciary or statutory obligations; and
- (c) Aurium has given Padbury 5 Business Days to negotiate amendments to this agreement and the Share Scheme for the purpose of making the Share Scheme a superior transaction to the Superior Proposal.

10.6 No due diligence

Without limiting the general nature of clause 10.1, during the Exclusivity Period, Aurium must not without Padbury's prior written consent:

- (a) solicit, initiate or permit any party (other than Padbury or its agents) to undertake due diligence investigations on Aurium or any of its subsidiaries where to do so would involve a breach of clause 10.1; or
- (b) make available to any other person (other than Padbury or its agents) or permit any such person to receive any non-public information relating to Padbury or any of its subsidiaries where to do so would be a breach of clause 10.1.

This clause 10.5 does not prevent Aurium providing information to the ASX or Aurium's auditors and advisers acting in that capacity in the ordinary course of business or to otherwise effect the Transaction.

10.7 Equal access to information

If Aurium or any of its subsidiaries (or any director, officer, employee, or adviser of Aurium or a subsidiary) provides any information relating to Aurium, any of its subsidiaries or any of their business or operations to any person in connection with or for the purposes of a current or future Competing Transaction, it must promptly provide to Padbury a complete copy of that information if it has not already done so.

10.8 Warranty and representation

Aurium represents and warrants to Padbury that, as at the date of this agreement:

- (a) no agreement, arrangement or understanding exists in relation to any expression of interest, offer or proposal of the kind referred to in clause 10.1; and
- (b) none of Aurium, any subsidiary of Aurium, or any director, officer, employer or adviser of any of them is participating, directly or indirectly, in any discussions or negotiations with a person other than Padbury that concern, or that could reasonably be expected to lead to a Competing Transaction.

11 Conduct of Court proceedings

- (a) Aurium and Padbury are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This agreement does not give Aurium or Padbury any right or power to give undertakings to the Court for or on behalf of the other party without that party's consent.
- (c) Aurium and Padbury must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this agreement.

12 Duty, costs and expenses

12.1 Stamp duty

Padbury must:

- (a) pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this agreement or the Schemes or the steps to be taken under this agreement or the Schemes; and
- (b) indemnify Aurium against any liability arising from failure to comply with clause 12.1(a).

12.2 Costs and expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this agreement and the proposed, attempted or actual implementation of this agreement, the Scheme and the Transaction Documents.

13 General

13.1 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.
- (c) Each party acknowledges and confirms that clauses 13.1(a) and (b) do not prejudice any rights a party may have in relation to information which has been filed by the other party with the ASIC or ASX.

13.2 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

13.3 Consents

Any consent referred to in, or required under, this agreement from any party may not be unreasonably withheld, unless this agreement expressly provides for that consent to be given in that party's absolute discretion.

13.4 Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as shown below:

Aurium

Name: Terry Quinn
Address: 15 Colin Street, West Perth, WA 6005
Fax no: +61 8 6460 0254
For the attention of: Managing Director

Padbury

Name: Gary Stokes
Address: 15 Colin Street, West Perth, WA 6005
Fax no: +61 8 6460 0254
For the attention of: Managing Director

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 13.4(b); and
- (e) is regarded as received by the addressee:
 - (1) if sent by prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (2) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and
 - (3) if delivered by hand, on delivery at the address of the addressee as provided in clause 13.4(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

13.5 Governing law and jurisdiction

- (a) This agreement is governed by the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and courts competent to hear appeals from those courts.

13.6 Waivers

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

13.7 Variation

This agreement may only be varied by a document signed by or on behalf of each of the parties.

13.8 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

13.9 Further action

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

13.10 Entire agreement

This agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

13.11 Counterparts

- (a) This agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this agreement by signing any counterpart.

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Timetable

Share Scheme

Option Scheme

Share Deed Poll

Option Deed Poll

[Schedules and signing page removed from executed version released to ASX]