



**13 November 2012**

**JOINT ASX / MEDIA RELEASE**

**Texon Petroleum Merger with Sundance Energy Australia**

- Texon and Sundance reach an agreement to merge
- One Sundance share will be issued for every two Texon shares
- Texon shareholders to retain non-EFS assets in new listed vehicle— Talon Petroleum
- Texon Board unanimously recommends the proposal and intend to vote shares they control in favour<sup>1</sup>
- Proposal via scheme of arrangement and subject to Texon shareholder and court approval

The Boards of Texon Petroleum Limited ("**Texon**") (ASX: TXN) and Sundance Energy Australia Limited ("**Sundance**") (ASX: SEA) are pleased to announce that they have agreed to the proposed Merger of Texon with Sundance via a scrip transaction that provides a unique consolidation opportunity with significant benefits for shareholders of both companies, including:

- Significant increase in scale of operations and market capitalisation;
- High quality reserve base with basin diversity and combined Proved plus Probable plus Possible reserves of 47.8 mmbbl with PV10 of \$572.9 million;
- Low risk growth potential through the drill bit in the Bakken/Three Forks, Wattenberg (Niobrara/Codell), and Eagle Ford Shale ("EFS") with significant upside in the combined company's appraisal program in the Mississippian and Woodford;
- Significant funding capacity with, as of 30 September 2012, approximately \$163 million in cash and \$100 million senior debt facility, with \$15 million drawn; and
- Creation via demerger from Texon ("**Demerger**") of an exciting new exploration vehicle, Talon Petroleum Limited ("Talon"), which will hold all of Texon's non Eagle Ford Shale assets.

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<sup>1</sup>Subject to there being no superior proposal and subject to obtaining an independent expert's opinion that the Merger proposal is in the best interests of Texon shareholders.

## **Merger Scheme**

Sundance and Texon have today agreed to a merger via a scheme of arrangement subject to votes of Texon's shareholders, the Demerger taking place, and Court and other necessary approvals. If approved, Texon shareholders will receive:

- One share in Sundance for every two shares held in Texon valued at \$0.41 per share based on Sundance's closing share price on 12 November 2012 of \$0.82; and
- One share in Talon for every one share held in Texon that will include significant potential value through Texon's non-EFS exploration portfolio.

Texon's CEO Cliff Foss said, "The transaction between Texon and Sundance makes sense on a number of levels, and provides significant benefits for shareholders of both companies. A transaction with Sundance provides asset diversity and the required capital to fully exploit Texon's attractive low risk development EFS assets which is expected to enhance shareholder value."

Sundance's Managing Director Eric McCrady said "The proposed merger between Sundance and Texon is a unique value-adding consolidation opportunity with significant benefits for shareholders of both companies. The combined Company will have production, cash flow, and reserve growth potential with highly attractive risk adjusted return potential. Importantly, the combined Company will have the funding capacity to unlock significant value for shareholders."

## **Sundance Post Merger with Texon**

Post the Merger with Texon, Sundance will have an attractive and diversified portfolio of onshore US oil and gas assets. Key attributes of the combined Company include:

- Net production in the third quarter of calendar year 2012 would have been 1,242 boepd had the companies been combined, after eliminating production from Sundance's divested South Antelope prospect and Texon's non EFS production;
- Proved reserves of 7.1 mmboe with a PV10 of \$113.1 million;
- Proved and probable reserves of 15.9 mmboe with a PV10 of \$246.9 million.

In addition to these oil and gas assets, the group will have the financial strength and flexibility to pursue further acquisitions and fully exploit the development potential of its assets, with a cash position in excess of \$163 million and undrawn debt facilities of \$85 million.

As part of the Merger arrangements, the existing Sundance Board will remain and the current Texon Board will resign, becoming the Board of Talon Petroleum.

## **Talon Petroleum**

In accordance with its previously announced strategy, prior to the Merger, Texon intends to demerge its non-EFS assets on the basis that the EFS assets have moved

into a development and production phase and naturally sit separately from Texon's exploration and appraisal business.

Details of the Demerger, which is not conditional upon the Merger taking place, are as follows:

- The Demerger Scheme will result in a demerger of Texon's non EFS assets into Talon;
- Talon will be listed on the ASX and will hold:
  - a 100% interest in all oil and gas assets of Texon other than its interest in the EFS assets;
  - the Prospect Generation Agreement with Wandoo Energy LLC; and
  - cash retained after giving effect to required cash uses associated with the Merger.
- Talon will be led by Cliff Foss and Texon's existing management team;
- The Demerger allows Texon shareholders to continue to participate, through Talon, in the value embedded in Texon's non-EFS oil and gas assets and prospects; and
- It is proposed that the Demerger will be effected through a scheme of arrangement to be considered by Texon shareholders.

Commenting on Talon, Mr Foss said, "Talon provides an exploration and appraisal vehicle that will hold Texon's current non EFS assets including the Olmos and recently leased prospects in East Texas. Recent improvements in horizontal drilling techniques and fracture stimulation, have opened up a number of lower risk opportunities in mature, well serviced areas, and these opportunities will be a focus for Talon."

### **Process for Demerger & Merger**

The Demerger and Merger will be proposed to shareholders under two separate Court-approved Schemes of Arrangement and is expected to be completed in the first quarter of calendar year 2013 as set forth in the indicative time table below:

<b>Event</b>	<b>Date</b>
Scheme Implementation Agreement signed	13 November 2012
Scheme Booklet lodged with ASIC for review	December 2012
First Court hearing occurs	January 2013
Scheme Booklet is despatched to Texon shareholders	January 2013
Texon Scheme Meetings held	February 2013
Second Court hearing to approve Schemes	February 2013
Implementation Date	March 2013

These dates are indicative only and subject to change.

### **Other Terms**

Texon and Sundance have agreed a mutual break fee of \$1 million, payable in certain

circumstances if the Merger does not proceed, together with other customary protection measures.

A presentation setting out further details of the Merger and Demerger will be made available to the ASX, and on both Texon's and Sundance's websites.

A copy of the Scheme Implementation Agreement ("SIA") (minus schedules and annexures) is attached to this release. The SIA contains, among other terms, the conditions of the Merger proposal, including a requirement that an independent expert opines that the Merger proposal is in the best interests of Texon shareholders and that a favourable tax ruling is obtained in relation to the Demerger.

A Talon presentation will also be made available to the ASX, and on Texon's website shortly.

### **Advisers**

Texon has retained RBS Morgans as financial advisers, and Minter Ellison as legal advisers.

Sundance has retained Johnson Winter & Slattery in Australia and Hogan Lovells in the US as legal advisers.

### **Investor Briefing**

Sundance and Texon will be holding an investor briefing on Wednesday 14 November 2012 at 10:30am (AEDT). Dial-in details are set out below:

Telephone: 1800 558 698 (within Australia) or +61 2 9007 3187 (outside Australia)  
Participant passcode: 727480

### **ENDS**

### **For further information contact:**

#### **Sundance Energy Australia Limited**

ACN 112 202 883

Eric McCrady, Managing Director

Tel: +1 (303) 543 5703

Mike Hannell, Chairman

Tel: +61 8 8363 0388

#### **Texon Petroleum Ltd**

ACN 119 737 772

Cliff Foss, CEO & President

Tel: +61 7 3211 1122

John Armstrong, Chairman

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### **Media enquiries**

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## Footnotes and Definitions

Oil prices are based on a NYMEX West Texas Intermediate price of \$95.67 per barrel for Sundance and \$100 per barrel for Texon and are adjusted by lease for quality, transportation fees, and regional pricing differentials.

Sundance's reserves are as of 1 July 2012 and Texon's reserves are as of 1 August 2012, both as estimated by Netherland Sewell and Associates, Inc..

Gas prices are based on a NYMEX Henry Hub price of \$3.146 per MMBTU and are adjusted by lease for energy content, transportation fees, and regional price differentials.

All prices are held constant throughout the lives of the properties.

The estimates in the reserve reports were prepared in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PMRS) approved by the Society of Petroleum Engineers (SPE).

"Net Revenue" is calculated net of royalties, production taxes, lease operating expenses, and capital expenditures but before Federal Income Taxes.

"PV10" is defined as the discounted Net Revenues of the Company's reserves using a 10% discount factor.

"Possible reserves" are estimated in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PRMS) approved by the Society of Petroleum Engineers.

"Probable reserves" are estimated in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PRMS) approved by the Society of Petroleum Engineers.

"Proved reserves" are estimated in accordance with the definitions and guidelines set forth in the 2007 Petroleum Resources Management System (PRMS) approved by the Society of Petroleum Engineers.

"boe" is defined as barrel of oil equivalent, using the ratio of 6 mcf of Natural Gas to 1 bbl of Crude Oil. This is based on energy conversion and does not reflect the current economic difference between the value of 1 MCF of Natural Gas and 1 bbl of Crude Oil.

"m" is defined as a thousand.

### **About Sundance Energy Australia Limited**

*Sundance Energy Australia Limited (ASX: SEA) is an Adelaide-based, independent energy exploration company, with a wholly owned US subsidiary, Sundance Energy Inc., located in Denver, Colorado, USA. The Company is focused on the acquisition and development of large, repeatable oil and natural gas resource plays in North America. Current activities are focused in the Williston, Denver-Julesburg and Anadarko Basins.*

*A comprehensive overview of the Company can be found on Sundance's website at [www.sundanceenergy.com.au](http://www.sundanceenergy.com.au).*

### **About Texon Petroleum Limited**

*Texon Petroleum Limited (ASX: TXN) is an Australian-based oil and gas explorer and producer with its operations currently located in South Texas, USA. Texon's goal is to discover and produce commercial*

*quantities of oil and natural gas condensate from large scale projects that allow for multi-well drilling*

*programs in large lease blocks using horizontal drilling technologies, hydraulic fracturing and 3D seismic data to aid in structural and stratigraphical control.*

### **Competent Person's Statement**

*This announcement contains information on Sundance Energy's reserves and resources which has been reviewed by Brian Disney, a Colorado licensed Professional Engineer, who is qualified in accordance with ASX Listing Rule 5.11 and has consented to the inclusion of this information in the form and context in which it appears.*

*This announcement also contains information on Texon Petroleum's reserves and resources, which has been reviewed by Delilah B Hainey, who is qualified in accordance with ASX Listing Rule 5.11. and has consented to the inclusion of this information in the form and context in which it appears.*

# Scheme Implementation Agreement

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Texon Petroleum Limited (**Target**)

Sundance Energy Australia Limited (**Bidder**)

MinterEllison

L A W Y E R S

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[www.minterellison.com](http://www.minterellison.com)

# Scheme Implementation Agreement

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# Details

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Date 13 November 2012

## Parties

Name **Texon Petroleum Ltd**  
ABN 24 119 737 772  
Short form name **Target**  
Notice details Level 9, 46 Edward Street, Brisbane, QLD, 4000  
Facsimile: +61 7 3211 0133  
Attention: Company Secretary

Name **Sundance Energy Australia Limited**  
ABN 76 112 202 883  
Short form name **Bidder**  
Notice details 32 Beulah Road, Norwood, SA, 5067  
Facsimile: +61 8 8132 0766  
Attention: Company Secretary

## Background

- A Target and Bidder have agreed that Bidder will acquire the Scheme Shares pursuant to the Scheme, subject to the approval of the Target Shareholders and the Court.
- B At the request of Bidder, Target intends to propose the Scheme and issue the Scheme Booklet.
- C Target and Bidder have agreed to do the things required by this agreement in order to enable the Scheme to be proposed, approved and implemented.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Agreed Announcement** means the public announcement to be issued by Target in the form set out in Annexure 3.

**Agreed Form** means, in relation to any document, such document in the form agreed between Bidder and Target and initialled by them for the purposes of identification.

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

**Assigned Depths** means all depths below the top of the Eagle Ford formation McMullen Co, Texas, which is defined for all purposes herein as the stratigraphic equivalent of the top of the Eagle Ford Shale formation as shown at a depth of 10,674 feet on the Weatherford array induction/RSFE photo density/neutron compensated sonic log, run one, run October 25, 2009, in the Aurora Resources Corporation Tyler Ranch #4 well, API#42-311-34163, located in the GWT&P RR Co survey, Texas abstract a-529, McMullen County, Texas.

**Associate** has the same meaning as in section 12(2) of the Corporations Act.

**ASX** means ASX Limited ACN 008 624 691.

**Bidder Deed Poll** means the deed poll substantially in the form of Annexure 1 (or in such other form as agreed between Target and Bidder).

**Bidder Group** means Bidder, its Subsidiaries and Controlled Entities.

**Bidder Indemnified Parties** means Bidder, its Related Entities and each of their respective directors, company secretaries and employees. It does not include any member of Target Group.

**Bidder Information** means all information regarding or relating to the Bidder Group that is provided by Bidder to Target in writing for inclusion in the Scheme Booklet.

**Bidder Material Adverse Change** an event, change or circumstance (or, in the case of any pre-existing event, change or circumstance, any worsening thereof) that occurs, is announced or becomes known to Target (in each case whether or not it becomes public) after the date of this agreement which individually or in the aggregate with other such events, changes or circumstances, has or would, with the lapse of time, be reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial position, financial performance, prospects or profitability of the Bidder Group taken as a whole; or
- (b) the result that the business of the Bidder Group is unable to be carried on in substantially the same manner as carried on at the date of this agreement,

other than:

- (c) a matter, event or circumstance authorised or permitted by this agreement or the Scheme or required to be done or procured by the Bidder pursuant to this agreement or the Scheme or any consequence of any such matter, event or circumstance;

- (d) a matter, event or circumstance to the extent that it was Fairly Disclosed in any Public Register or Fairly Disclosed in writing by Bidder to Target before the date of this agreement;
- (e) a matter, event or circumstance comprising a change in any applicable law that affects the oil and gas industry in general in Australia or the United States; or
- (f) a matter, event or circumstance relating to any material adverse change or disruption to the existing financial markets, political or economic conditions of Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China or the international financial markets or any change in national or international political, financial or economic conditions; or
- (g) buying or selling an asset, issuing shares or borrowing any moneys which is consistent with the principles set out in document in the Agreed Form entitled “**Bidder Permitted Activities**”, in the period until the Regulator's Draft is lodged with ASIC.

**Bidder Prescribed Occurrence** means the occurrence of any of the following:

- (a) Bidder converting all or any of its securities into a larger or smaller number of securities;
- (b) Bidder resolving to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its securities;
- (c) Bidder declaring, paying or distributing any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
- (d) Bidder:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (e) Bidder issuing securities, or granting an option over its securities, or agreeing to make such an issue or grant such an option,
- (f) Bidder making any change or amendment to its constitution; or
- (g) an Insolvency Event occurring in relation to Bidder,

provided that a Bidder Prescribed Occurrence will not include:

- (h) buying or selling an asset, issuing shares or borrowing any moneys which is consistent with the principles set out in the document in the Agreed Form entitled “**Bidder Permitted Activities**”, in the period until the Regulator's Draft is lodged with ASIC, provided that the Bidder has first notified the Target about the Bidder’s intention and has consulted with the Target in relation to buying or selling an asset where the amount or value of the consideration provided (or to be provided) for the asset is \$20 million or more (where “consulted with the Target” does not mean or imply that agreement is required from the Target);
- (i) a matter which is required to be done or procured by Bidder pursuant to this agreement or the Scheme;
- (j) a matter the undertaking of which has been approved in writing by Target, such approval not to be unreasonably withheld;
- (k) a matter that has been Fairly Disclosed in writing by Bidder to Target, or which has been Fairly Disclosed in any Public Register, before the date of this agreement;

- (l) the issue of any Bidder Shares pursuant to:
  - (i) any employee share or option plan; or
  - (ii) any proposed capital raising,
 that has been Fairly Disclosed in writing by Bidder to Target, or which has been Fairly Disclosed in any Public Register, before the date of this agreement;
- (m) anything reasonably necessary or desirable in connection with Bidder acquiring any entity, business or asset, provided that the Bidder has consulted with the Target regarding such acquisition and that such acquisition is not likely to give rise to a Bidder Material Adverse Change; and
- (n) anything reasonably necessary or desirable in connection with exercising the right to match under clause 13.6.

**Bidder Share** means a fully paid ordinary share in Bidder.

**Business Day** has the meaning given in the Listing Rules.

**Claim** means any liability, obligation, debt, cause of action, disability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Competing Proposal** means any proposed or possible transaction or arrangement pursuant to which, if ultimately completed, any person or persons (other than Bidder or a Related Entity of Bidder) would:

- (a) acquire (directly or indirectly):
  - (i) an interest in all or a substantial part of the assets or business of Target or the Target Group (other than pursuant to the Demerger);
  - (ii) without limiting paragraph (i) above, an interest in all or a substantial part of the Target Assets; or
  - (iii) a relevant interest (as defined in the Corporations Act) in more than 20 per cent of the voting shares of Target;
- (b) acquire (directly or indirectly) Control of Target; or
- (c) otherwise acquire (directly or indirectly) or merge (directly or indirectly) with Target (including by a reverse takeover bid, reverse scheme of arrangement or dual listed company or similar structure).

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Control** has the meaning given in section 50AA of the Corporations Act.

**Controlled Entity** means, in respect of a party, an entity that party Controls.

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

**Court** means the Federal Court (Sydney Registry) or such other Australian court of appropriate jurisdiction as agreed between the parties.

**Data Room Index** means the index of the Target Due Diligence Information initialled by the parties on the date of this document for the purposes of identification.

**Demerged Assets and Liabilities:**

- (a) means all assets, rights, liabilities and obligations of Target Group **other than** the Target Assets and **other than** the Target Liabilities;
- (b) includes, without limitation to paragraph (a) above, the Excluded Assets and all the issued shares in the following entities:
  - (i) Texon III Ltd;
  - (ii) Rubox Pty Ltd, Texoz E&P Holdings III, Inc and Texoz E&P III, Inc; and
  - (iii) Texon I Pty Ltd, Texoz E&P Holdings I, Inc and Texoz E&P I, Inc; and
- (c) includes, without limitation to paragraph (a) above, the Excluded Liabilities.

**Demerger** means the Separation and the distribution or transfer of the entire issued capital of the Demerger Entity to the Target Shareholders, to be implemented by the Demerger Scheme.

**Demerger Deed** means the deed of that name between Target and the Demerger Entity setting out the principles underlying the Demerger, consistent with the terms set out in the Demerger Deed Term Sheet.

**Demerger Deed Term Sheet** means the document of that name initialled by the parties for identification and dated the same date as this document.

**Demerger Entity** means Texon III Ltd ABN 88 153 229 086 or another newly incorporated subsidiary of the Target which, after the date of this agreement, becomes the holding company of Texon III Ltd and is the entity that, together with its Subsidiaries holds (or will on the implementation date of the Demerger Scheme, if it proceeds, hold) all of the Demerged Assets and Liabilities.

**Demerger Group** means the Demerger Entity and each of its Subsidiaries as at the implementation date of the Demerger.

**Demerger Implementation Deed** means the deed of that name between Target and the Demerger Entity setting out the implementation steps of the Demerger, consistent with the terms set out in the Demerger Deed Term Sheet.

**Demerger Scheme** means the mechanism for implementing the Demerger (whether by scheme of arrangement, capital reduction, dividend or any combination of them) or otherwise as Target and Bidder agree in writing, such agreement not to be unreasonably withheld or delayed.

**Demerger Transaction Documents** means the documentation in relation to the Demerger Scheme, prepared and approved in accordance with clause 3.1(n), and must include the following documents unless the Bidder agrees otherwise:

- (a) the Demerger Deed (consistent with the terms set out in the Demerger Deed Term Sheet);
- (b) the Demerger Implementation Deed (consistent with the terms set out in the Demerger Deed Term Sheet);
- (c) the Joint Use Agreement (consistent with the terms set out in the Joint Use Agreement Term Sheet).

**Details** means each party's details for provision of Notices, as set out at the start of this agreement.

**Disclosed Actions** mean the matters referred to in Part 2 of **Schedule 2**.

**Drilling Program** means the drilling of the wells referred to in Part 1 of **Schedule 2**.

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

**Effective Date** has the meaning set out in clause 1.2.

**Escrow Deed** means the deed of that name between Bidder, Target, Demerger Entity and an escrow agent setting out the principles underlying the escrow of cash to be used for payment of claims for breaches of representations and warranties under clause 8.5, consistent with the terms set out in the Escrow Deed Term Sheet.

**Escrow Deed Term Sheet** means the document of that name initialled by the parties for identification and dated the same date as this document.

**Excluded Assets** means:

- (a) interests in the Leases and other items comprising the Properties to the extent related to depths above the Assigned Depths, provided, however, that the Wells are not Excluded Assets even as to their wellbores above the Assigned Depths but the Excluded Assets include all other interests in Leases and the Properties above the Assigned Depths;
- (b) the Excluded Records;
- (c) all geophysical and other seismic and related technical data and information relating to the Leases to the extent not primarily attributable to the Assigned Depths;
- (d) licensed geophysical and other seismic and related technical data and information;
- (e) the entity which is the qualified operation entity in Texas for the Target Group at the date of this agreement (i.e. Texoz E&P I, Inc);
- (f) any amount payable to the Demerger Entity under Schedule 3;
- (g) all of Target's proprietary computer software, patents, trade secrets, copyrights, names, trademarks, logos and other intellectual property, except for proprietary geophysical, geological and similar data relating solely to the Assigned Depths; and
- (h) any other assets that the parties agree, acting reasonably and in good faith, should be Excluded Assets.

**Excluded Liabilities** means all obligations, liabilities, duties damages, claims, demands, liabilities, judgments, losses and costs, expenses and attorneys' fees to the extent they are attributable to, or arise out of:

- (a) any assets included in the Demerged Assets and Liabilities (including the Target Group's ownership or operation of such assets prior to the Separation);
- (b) any futures, options, swaps, hedges or other derivatives in place with respect to the Target Assets;
- (c) intercompany notes and accounts payable by Target or a Target Subsidiary to any member of the Demerger Group;
- (d) the Target's (or a Target Subsidiary's) ownership or operation of the Target Assets prior to the Second Court Date to the extent arising out of or related to any gross negligence or willful misconduct or breach of applicable laws by or on behalf of a member of the Target Group prior to the Second Court Date;



- (e) other liabilities to the extent arising out of or related to any gross negligence or willful misconduct or breach of applicable laws by or on behalf of a member of the Target Group prior to the Second Court Date;
- (f) Target's (or a Target Subsidiary's) employee benefit plans and superannuation obligations and all other matters relating to the employment or engagement by Target or a Target Subsidiary of any employees, directors or contractors who only make available a single individual providing their personal services (other than liabilities under deeds of indemnity) in the period until Implementation (including the termination of any such employment or engagement on or after Implementation); and
- (g) the death of an individual on January 23, 2012 during the drilling of the Peeler #4 well in McMullen County, Texas including legal costs and expenses relating to the legal proceedings;
- (h) cost of directors and officers insurance (including, without limitation, run-off cover for any period after Implementation) relating to persons who were directors and officers of the Target Group prior to Implementation;

but not any contractual liabilities in respect of these amounts to the extent arising only under Schedule 3.

**Excluded Records** means:

- (a) all corporate, financial, income and franchise tax and legal records of Target that relate to Target's business other than the Target Assets;
- (b) any records to the extent disclosure or transfer is restricted by any third party license agreement, other third party agreement or applicable law;
- (c) computer software;
- (d) all legal records and legal files of Target and all other work product of and attorney-client communications with any of Target's legal counsel (other than copies of
  - (i) title opinions;
  - (ii) Contracts; and
  - (iii) records and files with respect to any previous litigation matters relating to the Target Assets);
- (e) personnel records; and
- (f) any records with respect to the other Excluded Assets,

and except to the extent they:

- (g) relate solely to the Target Assets or the Target Liabilities; or
- (h) are records which Target or a Target Subsidiary is required to retain by law; or
- (i) relate to Target's (or a Target Subsidiary's) filings with Regulators; or
- (j) relate to Target's (or a Target Subsidiary's) filings with taxation authorities.

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

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

(c) the Sunset Date.

**Existing Options** means 17,800,000 unlisted options to acquire shares in Target.

**Explanatory Statement** means the statement pursuant to section 412 of the Corporations Act which will be, registered by ASIC in relation to the Scheme, a copy of which will be included in the Scheme Booklet.

**Foreign Shareholder** means a Scheme Shareholder whose address in the Register is a place outside Australia, New Zealand or the United States of America or such other place agreed in writing between Bidder and Target in accordance with clause 4.2(b).

**Forward Looking Information** means, in relation to an entity, all information which relates to the future financial position, operations, affairs, business or strategic plans of the entity, including any budget for a future financial period or any forecast or estimate.

**Gathering Systems** has the meaning given to that term in the definition of Target Assets.

**GST** means a goods and services tax or similar value added tax levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

**Hydrocarbons** means, subject to the terms of the Leases and other agreements identified herein, oil, gas, casinghead gas, condensate, natural gasoline, ethane, propane, butane, natural gas liquids, and other liquid or gaseous hydrocarbons, or any of them or any combination thereof, and all products and substances extracted, separated, processed and produced therewith or therefrom, including sulfur, coalbed gas and carbon dioxide, and all other minerals of every kind and character that may be covered by or included in or attributable to the Assigned Depths in the Leases, Wells and Units.

**Implementation** means the implementation of the Scheme in accordance with its terms following it becoming Effective.

**Implementation Date** has the meaning set out in clause 1.2.

**Independent Expert** means a person to be appointed by Target pursuant to clause 5.1(c) as independent expert to express an opinion on whether the Scheme is in the best interests of Target Shareholders in accordance with the Corporations Act and ASIC policy and practice.

**Insolvency Event** means in relation to a person:

- (a) the person is or becomes unable to pay its debts as and when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act, or would be presumed to be insolvent if that Act applied;
- (b) the person suspends or threatens to suspend payment of its debts generally;
- (c) the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or the making of any order, or the passing of any resolution, for the winding up, liquidation or bankruptcy of the party other than where the application or order (as the case may be) is set aside within 14 days;

- (d) the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager or other insolvency official (whether under Australian law or foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (e) the appointment of an administrator to the person;
- (f) the entry by a person into any compromise or arrangement with creditors; or
- (g) the person ceases or threatens to cease to carry on business.

**Joint Use Agreement** means the agreement of that name between the Demerger Entity or any of its subsidiaries and Target or any of its subsidiaries in relation to the joint use of certain of the Target Assets with certain of the Demerged Assets and Liabilities, consistent with the terms set out in the Joint Use Agreement Term Sheet.

**Joint Use Agreement Term Sheet** means the document of that name initialled by the parties for identification and dated the same date as this document.

**Leases** has the meaning given to that term in the definition of Target Assets.

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

**Non Competition Deed** means the deed to be entered into by the Demerger Entity and Bidder creating the restrictions and obligations set out in Schedule 6.

**Notice of Meeting** means the notice convening Scheme Meeting, together with the proxy forms for that meeting.

**Permitted EFS Activities** mean the Drilling Program and the Disclosed Actions.

**Properties** has the meaning given to that term in the definition of Target Assets.

**Public Registers** means the following publicly searchable (whether or not on payment of a fee) files and registers:

- (a) ASX as at the date that is 2 Business Days before the date of this agreement;
- (b) ASIC as at the date that is 2 Business Days before the date of this agreement;
- (c) the High Court, Federal Court and the Supreme Courts in each State and Territory of Australia as at the date that is 2 Business Days before the date of this agreement;
- (d) the Personal Property Securities Register of Australia as at the date that is 2 Business Days before the date of this agreement;
- (e) IP Australia as at the date that is 2 Business Days before the date of this agreement; and
- (f) in relation to a Target Subsidiary (other than Target (Eagle Ford) Pty Ltd), the records of the Secretary of State of the relevant State of incorporation or registration of that Target Subsidiary as at the date that is 2 Business Days before the date of this agreement.

**Record Date** has the meaning set out in clause 1.2.

**Register** means the share register of Target kept pursuant to section 168(1) of the Corporations Act.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to Target and to the extent described in clause 5.3(d), Bidder, which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Authority** includes:

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

**Regulatory Review Period** means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

**Related Entity** means in relation to a party, any entity that is:

- (a) related to the first entity within the meaning of section 50 of the Corporations Act;
- (b) in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the first entity;
- (c) any trust of which an entity described in paragraph (a) or (b) above is a trustee; or
- (d) an economic entity (as defined in any approved Australian accounting standard) that is Controlled by the first entity,

except that, for the purposes of this agreement:

- (e) no member of Target Group (including Target) is to be treated as being a Related Entity of Bidder; and
- (f) neither Bidder nor any of its Controlled Entities, other than any member of the Target Group, is to be treated as being a Related Entity of Target.

**Representatives** means, in relation to an entity:

- (a) each of the entity's Related Entities; and
- (b) each of its directors, officers, employees, contractors, advisers (including legal, financial and other expert advisers) and agents, but excluding the Independent Expert.

**Required Consultation Period** means the shorter of:

- (a) 5 Business Days after both parties become aware that clause 3.7(a)(i) or 3.7(a)(ii), as the case may be, is triggered; and
- (b) the period commencing at the time both parties become aware that clause 3.7(a)(i) or 3.7(a)(ii), as the case may be, is triggered and ending at 8.00am on the Second Court Date.

**Retained Cash Amount** has the meaning given to that term in Schedule 3.

**Revenue Entitlement Date** has the meaning set out in clause 1.2.

**Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Target and Target Shareholders, the form of which is contained in Annexure 2, as amended with the written agreement of Target and Bidder, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Target and Bidder.

**Scheme Consideration** means the consideration to be provided to Scheme Shareholders under the terms of the Scheme for the transfer to Bidder of their Scheme Shares in accordance with clause 4.2.

**Scheme Booklet** means the information in connection with the Scheme to be despatched to all Target Shareholders and approved by the Court, including the Scheme, the Bidder Deed Poll, the Explanatory Statement, an independent expert's report prepared by the Independent Expert and the Notice of Meeting.

**Scheme Meeting** means the meeting of Target Shareholders to be ordered by the Court in relation to the Scheme and convened pursuant to section 411(1) of the Corporations Act. It includes any adjournment of that meeting.

**Scheme Shares** means the Target Shares on issue at the Record Date.

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

**Second Court Date** has the meaning set out in clause 1.2.

**Second Court Hearing** means the hearing of the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the application is adjourned or subject to appeal for any reason, the hearing of the adjourned application or appealed application.

**Separation** means the transfer to, or assumption by (as applicable), the Demerger Group of the Demerged Assets and Liabilities in accordance with the Demerger Deed Term Sheet and the Demerger Deed.

**Subsidiaries** has the meaning given in section 9 of the Corporations Act.

**Sunset Date** has the meaning set out in clause 1.2.

**Superior Proposal** means a bona fide Competing Proposal in respect of Target received by Target (and which was not obtained in breach of clause 13), which the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (and after having taken advice from its financial and legal advisers and having taken into account any factors the Target Board considers relevant):

- (a) is capable of being valued and consummated; and
- (b) would, if consummated, result in a transaction more favourable to Target Shareholders than the Scheme,

taking into account all terms and conditions of the Competing Proposal.

**Target Assets** means:

- (a) **(Target Subsidiaries)** the entire issued capital of each of the Target Subsidiaries;
- (b) **(Properties, leases, contracts etc)** all of Target's and its Subsidiaries' right, title and interest in producing and nonproducing oil and gas properties and related properties in the Assigned Depths in McMullen County, Texas held by Target and its Subsidiaries as at the Effective Date, and any interests in new leases held (or to be held) by Target under the Welhausen Participation Agreement, including the following (but excepting and excluding, in all such instances, the Excluded Assets):
  - (i) the oil and gas leases, oil, gas and mineral leases, subleases and other leaseholds, royalties, overriding royalties, net profits interests, mineral fee interests, carried interests, and other rights to Hydrocarbons in place that are identified on Part 1 of

Schedule 4 (collectively the **Leases**), insofar and only insofar as the Leases cover the Assigned Depths, together with:

- A. all rights, privileges, benefits and powers conferred upon the holder of the Leases with respect to the use and occupation of the lands covered thereby, but only in accordance with and subject the Joint Use Agreement;
  - B. all rights, options, titles and interests of Target, including rights to obtain or otherwise earn any interest in the Leases or within the lands covered by the Leases or any acreage pooled, communitized or unitized therewith; and
  - C. any other interests in the lands covered by the Leases, regardless of whether such interests are incorrectly described on or omitted from Part 1 of Schedule 4, but limited in all respects to the Assigned Depths;
- (ii) all pooled, communitized or unitized acreage which includes all or a part of any Lease (**Units**), and all tenements, hereditaments and appurtenances belonging to the Leases and Units, including all undivided interests of Target derived from the Leases in production of Hydrocarbons from any such Unit, whether such Unit production of Hydrocarbons comes from a Well or Wells located on or off a Lease;
  - (iii) all oil, gas, water, carbon dioxide, or injection wells located on the Leases or Units, whether producing, shut-in or temporarily abandoned, including the interests in the wells shown on Part 2 of Schedule 4 (**Wells**), but limited in the case of oil and gas wells to those Wells completed in the Assigned Depths (including all interests in the wellbores of such Wells, it being understood that the Demerger Entity will not retain interests in the Wells above the Assigned Depths, but the Target Assets will not include any other interests in leases above the Assigned Depths);
  - (iv) all flowlines, pipelines, gathering systems and appurtenances thereto located on the Leases or Units or used, or held for use, in connection with the operation of the Wells, including those identified on Part 3 of Schedule 4 (**Gathering Systems**) and together with the Units, Leases and Wells, **Properties**);
  - (v) all contracts, agreements and instruments to the extent applicable to the Properties or the production of Hydrocarbons from the Properties, including operating agreements, unitization, pooling and communitization agreements, declarations and orders, area of mutual interest agreements, joint venture agreements, farmin and farmout agreements, participation agreements, exchange agreements, transportation agreements, agreements for the sale and purchase of Hydrocarbons and processing agreements (**Contracts**);
  - (vi) all surface fee interests, easements, permits, licenses, servitudes, rights-of-way, surface leases and other surface rights appurtenant to, whether part of the premises covered by the Leases or Units or otherwise, and used or held for use solely in connection with, the Properties, including those interests set forth on Part 4 of Schedule 4, (which interests etc. the parties intend to be subject to the Joint Use Agreement);
  - (vii) all equipment, machinery, tools, fixtures and other tangible personal property and improvements located on the Properties or used or held for use solely in connection with the operation of the Properties or the production of Hydrocarbons

from the Properties that are owned (with respect to each such item) by Target  
**(Equipment)**;

- (viii) all Hydrocarbons produced from or attributable to the Assigned Depths in the Leases, Units or Wells at and after the Revenue Entitlement Date;
- (ix) originals (or copies where originals are not available) of any files, records, maps, information, and data, whether written or electronically stored, relating solely to the items described in sub-paragraphs (i) to (viii) above, including:
  - D. land and title records (including abstracts of title, title opinions, and title curative documents);
  - E. contract files;
  - F. correspondence;
  - G. operations, environmental, production, and accounting records; and
  - H. production, facility and well records and data,

but excluding any of the foregoing items that are Excluded Assets and any information that cannot, without unreasonable effort or expense that Bidder does not agree to undertake or pay, as applicable, be separated from any files, records, maps, information and data related to the Excluded Assets;

- (x) all equipment, machinery, tools, fixtures, inventory, vehicles, office leases, furniture, office equipment and related peripheral equipment, computers, field equipment and related assets that are subject to or currently leased by Target insofar as they are used or held for use in connection with the items described in sub-paragraphs (i) to (ix) above to the extent of the Assigned Depths; and
  - (xi) all geophysical data, geological data, engineering data and other technical data relating to the Properties, limited to the Assigned Depths;
- (c) **(Balance sheet items, tax, ancillary rights, benefits and liabilities)** inventory, trade credits, accounts receivable, notes receivable, audit adjustments, and other receivables and general intangibles relating to the Properties and all other rights, properties, privileges and liabilities to the extent associated with the use, ownership, and/or operation of any of the Properties;
  - (d) **(Tax Matters)** carried forward Australian tax losses of the Target and Target Subsidiaries and net operating loss carry forwards, deferred tax assets and other carried forward US tax losses of the Target and Target Subsidiaries;
  - (e) **(Retained Cash Amount)** an amount of cash equal to the Retained Cash Amount; and
  - (f) **(Records)** all:
    - (i) corporate, financial, income and franchise tax and legal records of Target (or a Target Subsidiary) that relate to Target's (or a Target Subsidiary's) business; and
    - (ii) all legal records and legal files of Target (or a Target Subsidiary) and all other work product of and attorney-client communications with any of Target's (or a Target Subsidiary's) legal counsel (including copies of title opinions, Contracts, and records and files with respect to any previous litigation matters,

relating:

- (iii) solely to the items described in paragraphs (a) to (d) above or the Target Liabilities; or
- (iv) which Target or a Target Subsidiary is required to retain by law
- (g) (**Other assets**) any other assets that the parties agree, acting reasonably and in good faith, should be Target Assets,

(it being acknowledged that the repetition of any item in more than one of the paragraphs or subparagraphs of this definition does not require that it is held more than once at the Implementation Date), and for the avoidance of doubt, the “**Target Assets**” do **not** include the Excluded Assets and do **not** include the Excluded Liabilities.

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

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

**Target Due Diligence Information** means the information made available to Bidder in the Project Talon electronic data room, as identified in the Data Room Index or during site visits by representatives of Bidder to premises used or occupied by Target Group.

**Target Group** means Target, its Subsidiaries and Controlled Entities.

**Target Indemnified Parties** means Target, its Related Entities and each of their respective shareholders, directors, company secretaries, employees and the Demerger Group from time to time. It does not include any member of Bidder Group.

**Target Information** means all information contained in the Scheme Booklet, other than the Bidder Information and the Independent Expert's report that is included in or accompanies the Scheme Booklet.

**Target Liabilities** means the liabilities of Target and the Target Subsidiaries and any of the following amount at Implementation:

- (a) accrued and unpaid legal, advisory (including costs of RBS Morgans and Albrecht), accounting, printing, mailing and other transaction costs incurred by Target and Target Subsidiaries in connection with preparation for, negotiation of, and consummation of the Demerger and the Scheme;
- (b) accrued but unpaid general and administrative expenses incurred by the Target and Target Subsidiaries from the Revenue Entitlement Date to the Implementation Date;
- (c) any accrued but unpaid part of the lease bonus payable to increase Target Group's working and net revenue interest under the Welhausen Participation Agreement as described in clause 1 of Part 2 of Schedule 2;
- (d) accrued and unpaid plug and abandon costs and remediation costs as described in clauses 3 and 6 of Part 2 of Schedule 2; and
- (e) accrued but unpaid amounts payable if the new Peeler leases described in item 4 of Part 2 of Schedule 2 is secured,

other than the Excluded Liabilities and except to any extent of any contractual liabilities arising only under Schedule 3, provided that the amounts payable to the holder of each encumbrance or security interest over any Target Assets referred to in clause 6.3(d) to secure a release of each such encumbrance or security interest will only be Target Liabilities to the extent that:

- (f) they relate to funds used solely to fund capital expenditure on development and production assets as part of the Permitted EFS Activities which relates to the Target Assets; and



- (g) the Target and Target Subsidiaries have sufficient funds available to satisfy its obligations under paragraph 4 of Schedule 3.

**Target Material Adverse Change** an event, change or circumstance (or, in the case of any pre-existing event, change or circumstance, any worsening thereof) that occurs, is announced or becomes known to Bidder (in each case whether or not it becomes public) after the date of this agreement which individually or in the aggregate with other such events, changes or circumstances, has or would, with the lapse of time, be reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial position, financial performance, prospects or profitability of the Target Group taken as a whole (but excluding the Demerger Group); or
- (b) the result that the business of the Target Group, other than any of the Demerged Assets and Liabilities, is unable to be carried on in substantially the same manner as carried on at the date of this agreement other than as a result of the Demerger,

other than:

- (c) a matter, event or circumstance authorised or permitted by this agreement or the Scheme or required to be done or procured by the Target pursuant to this agreement or the Scheme or the Demerger Scheme or any consequence of any such matter, event or circumstance;
- (d) a matter, event or circumstance to the extent that it was Fairly Disclosed in any Public Register or Fairly Disclosed in writing in the Target Due Diligence Information given before the date of this agreement;
- (e) a matter, event or circumstance comprising a change in any applicable law that affects the oil and gas industry in general in Australia or the United States; or
- (f) a matter, event or circumstance relating to any material adverse change or disruption to the existing financial markets, political or economic conditions of Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China or the international financial markets or any change in national or international political, financial or economic conditions.

**Target Prescribed Occurrence** means the occurrence of any of the following:

- (a) Target converting all or any of its securities into a larger or smaller number of securities;
- (b) Target resolving to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its securities;
- (c) Target declaring, paying or distributing any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
- (d) Target:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (e) Target issuing securities, or granting an option over its securities, or agreeing to make such an issue or grant such an option;
- (f) Target making any change or amendment to its constitution;
- (g) an Insolvency Event occurring in relation to Target; or

- (h) Target or any Subsidiary borrowing any moneys, or granting an encumbrance, provided that a Target Prescribed Occurrence will not include:
- (i) a matter which is required to be done or procured by Target to give effect to the Demerger Scheme;
  - (j) a matter which is required to be done or procured by Target pursuant to this agreement or the Scheme;
  - (k) a matter the undertaking of which has been approved in writing by Bidder;
  - (l) exercise of any of the Existing Options; or
  - (m) a matter that was Fairly Disclosed in any Public Register or Fairly Disclosed in writing in by the Target to Bidder before the date of this agreement;
  - (n) Target or any Subsidiary borrowing any moneys, or granting an encumbrance, as permitted by clause 6.3 (d).

**Target Shareholder** means each person who is registered in the Register as the holder of Target Shares from time to time.

**Target Share** means a fully paid ordinary share in Target.

**Target Subsidiaries** means each of Texon (Eagle Ford) Pty Ltd, Texoz Eagle Ford Holdings, Inc. and Texoz E&P II, Inc.

**Timetable** means the indicative timetable for the implementation of the Scheme set out in Schedule 1.

**Units** has the meaning given to that term in the definition of Target Assets.

**Welhausen Participation Agreement** means the participation agreement between Texoz E&P II, Inc., Eagle Ford Shale Exploration (EFSE) LLC, Wandoo Energy, LLC, Welhausen Operating Company LP and, for limited purposes, Leo O. Quintanilla, a natural person in respect of certain lands in McMullen County, Texas dated 24 October 2012.

**Wells** has the meaning given to that term in the definition of Target Assets.

## 1.2 Critical Dates

The critical dates in relation to the Scheme are as follows:

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

**Implementation Date** means the 3rd Business Day after the Record Date or such other date (after the Record Date) as Target and Bidder may agree in writing or as may be ordered by the Court or required by ASX.

**Record Date** means 7.00pm on the 5th Business Day following the Effective Date or such other date (after the Effective Date) as Target and Bidder may agree in writing or as may be required by ASX.

**Revenue Entitlement Date** means 1 October 2012.

**Second Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned or appealed application is heard.

**Sunset Date** means 30 April 2013 or such later date as Bidder and Target may agree in writing.

### 1.3 Interpretation

In this agreement, except where the context otherwise requires:

- (a) terms defined in the definition of Target Assets in clause 1.1 have that meaning through this agreement.
- (b) the singular includes the plural and vice versa;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **US\$, \$US, dollar** or **\$** is to currency of the United States of America;
- (g) a reference to time is to Brisbane, Australia time;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) a reference to **Fairly Disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person experienced in transactions similar to the Scheme and experienced in a business similar to any business conducted in relation to the Target Assets, to identify the nature and scope of the relevant matter, event or circumstance.

### 1.4 Headings

Headings are for ease of reference only and do not affect interpretation.

## 2. Agreement to propose Scheme

### 2.1 Proposal of Scheme

- (a) Target agrees to propose the Scheme on and subject to the terms of this agreement.
- (b) Bidder agrees with Target to assist Target to propose the Scheme on and subject to the terms of this agreement.

### 2.2 Compliance with obligations

The parties' obligations under this agreement to propose the Scheme are subject to their compliance with their respective obligations, functions, powers and duties under this agreement, Target's constitution, at law and under the Listing Rules.

### 2.3 Demerger Scheme

Target will propose and implement the Demerger Scheme in accordance with and subject to the terms and conditions of the Demerger Transaction Documents, and will ensure that:

- (a) the Demerger Scheme may become effective even if the Scheme does not become Effective; and
- (b) if both the Demerger Scheme and the Scheme are approved by the Target Shareholders, the Demerger will be implemented before the Scheme is implemented;

## 3. Conditions Precedent

### 3.1 Conditions Precedent to implementation of the Scheme

The Scheme will not become Effective, and the obligation of Bidder to pay the Scheme Consideration under clause 4.1(b)(ii) is not binding, until each of the following Conditions Precedent is satisfied or waived by a party in accordance with clause 3.2 on or prior to the Second Court Date (or such other date as specified in the relevant Condition Precedent):

- (a) **Approval of the Demerger Scheme:** on or before the Second Court Date, the Court approves the Demerger Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (b) **Demerger IER and tax rulings:** an independent expert's report issues in relation to the Demerger that the Demerger is in the best interests of Target Shareholders and Target secures tax rulings in relation to the Demerger and its impact on the Target Group acceptable to the Bidder and the Target acting reasonably;
- (c) **Independent Expert's report:** the Independent Expert issues its report which concludes that the Scheme is in the best interests of Target Shareholders before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act;
- (d) **Shareholder approval:** before 8.00am on the Second Court Date, Target Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act;
- (e) **Court approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act and an office copy of the Court Orders are lodged with ASIC by the Effective Date as contemplated by section 411(10) of the Corporations Act;
- (f) **Target Prescribed Occurrence:** no Target Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;

- (g) **Bidder Prescribed Occurrence:** no Bidder Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;
- (h) **Target representations and warranties:** the representations and warranties given by Target under clause 7.1 are true and correct in all material respects, in each case at the times set out in clause 7.5;
- (i) **Bidder representations and warranties:** the representations and warranties given by Bidder under clause 7.3 are true and correct in all material respects, in each case at the times set out in clause 7.5;
- (j) **Restraining orders:** as at 8.00am on the Second Court Date, no temporary restraining order, preliminary or permanent injunction or other order or decision by any court of competent jurisdiction or any Regulatory Authority is in effect and there is no other legal restraint or prohibition in effect preventing the consummation of any aspect of the Scheme on the Implementation Date;
- (k) **Target Material Adverse Change:** no Target Material Adverse Change occurs between the date of this agreement and 8.00am on the Second Court Date;
- (l) **Bidder Material Adverse Change:** no Bidder Material Adverse Change occurs between the date of this agreement and 8.00am on the Second Court Date;
- (m) **Existing Options:** prior to Target applying to Court for orders under s411(1) of the Corporations Act, all of the Existing Options have been exercised or cancelled on terms satisfactory to Bidder acting reasonably or each holder of Existing Options has entered into an option cancellation deed with Bidder and Target on terms satisfactory to Bidder acting reasonably;
- (n) **Demerger Transaction Documents and associated documents:** the Demerger Transaction Documents, Demerger Scheme and Escrow Deed are prepared by Target and approved by Bidder in writing (such approval not to be unreasonably withheld or delayed) by the date the Scheme Booklet is lodged with ASIC for regulatory review as provided in clause 5.1(d) and at 8.00am on the Second Court Date, the Bidder is of the opinion (acting reasonably) that the Demerger is capable of being, subject only to approval of the Court as contemplated by clause 3.1(a), implemented in accordance with the Demerger Transaction Documents and Demerger Scheme;
- (o) **Regulatory Approvals:** before 8.00am on the Second Court Date, ASX and ASIC issue or provide such consents, approvals or waivers or do other acts which the Bidder and Target agree (acting reasonably) are necessary to implement the transaction on the terms and conditions set out in this agreement;
- (p) **Agreement from holder of encumbrances to release encumbrances:** on or before the Second Court Date, the holder of each encumbrance or security interest over any Target Assets referred to in clause 6.3(d) agrees to release each encumbrance or security interest on payment of an amount nominated by the holder or holders in accordance with the terms of the facilities to which the encumbrances or security interests relate, with the release taking effect on Implementation and the Bidder is satisfied (acting reasonably) that the Target and the Target Subsidiaries have, and will as at Implementation have, sufficient funds available to satisfy the requirements of paragraph 4 of Schedule 3;
- (q) **Bidder Shareholder approval:** before 8.00am on the Second Court Date, the Bidder obtains all Bidder Shareholder approvals required (if any) in order to implement the Scheme; and

- (r) **Conditional resignation of officers:** All directors, secretaries and employees of the Target enter into conditional deeds of retirement, termination and release prior to First Court Date, on terms acceptable to the Bidder.

### 3.2 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(d), 3.1(e) and 3.1(o) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(b), 3.1(j) and 3.1(m) are for the benefit of Target and Bidder, and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of both parties.
- (c) The Conditions Precedent in clauses, 3.1(c), 3.1(g), 3.1(i) and 3.1(l) are for the sole benefit of, and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent of, Target.
- (d) The Conditions Precedent in clauses 3.1(f), 3.1(h), 3.1(k), 3.1(n), 3.1(p), 3.1(q) and 3.1(r) are for the sole benefit of, and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent of, Bidder.
- (e) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion.
- (f) If Target or Bidder waives the breach or non-fulfilment of any of the Conditions Precedent, that waiver will not preclude it from suing the other party for any breach of this agreement that resulted from the breach or non-fulfilment of the Condition Precedent that was waived or arises from the same event which gave rise to the breach or non-fulfilment of the Condition Precedent (provided that if the waiver of the Condition Precedent is itself conditional and the other party accepts the condition, the terms of the condition apply despite this clause 3.2(f)).

### 3.3 Satisfaction of Conditions Precedent

- (a) Each of Target and Bidder will use its best endeavours to procure that
  - (i) each of the Conditions Precedent is satisfied as soon as practicable after the date of this agreement or continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
  - (ii) there is no occurrence within the control of Target or Bidder (as the context requires) or their Related Entities that would prevent the Conditions Precedent being satisfied.
- (b) In relation to the Condition Precedent in clause 3.1(b), Target must provide to Bidder drafts of the tax ruling application and consult with Bidder in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from Bidder and its advisers on those drafts received on a timely basis.

### 3.4 Obligations regarding regulatory approvals

To the extent permitted by law and each party's respective legal obligations and without limitation to clause 3.3:

- (a) as soon as practicable after the date of this agreement, the parties must cooperate in good faith to develop a plan for communications with Regulatory Authorities that are required to be approached for the purpose of procuring the satisfaction of any Condition Precedent (each a **Relevant Regulatory Authority**);

- (b) each party must provide any Relevant Regulatory Authority with all information reasonably required by the Relevant Regulatory Authority in connection with the Scheme;
- (c) each party:
  - (i) must promptly provide copies to the other party of any written communication sent to or received from a Relevant Regulatory Authority in connection with the Scheme (except to the extent that such written communication contains commercially sensitive information of the party in correspondence with the Relevant Regulatory Authority); and
  - (ii) notwithstanding any other provision of this Agreement, for the purposes of obtaining any approval of a Relevant Regulatory Authority, neither Bidder nor Target is required to agree to any conditions or to provide or to agree to provide any written undertakings to a Relevant Regulatory Authority which are not reasonably acceptable to Bidder or Target (as the case requires).

### **3.5 Assistance of Representatives**

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to satisfy the Conditions Precedent.

### **3.6 Notice of failure to satisfy Condition Precedent**

- (a) Target and Bidder must promptly give the other notice of a failure to satisfy a Condition Precedent or of any event that will prevent a Condition Precedent being satisfied.
- (b) Target or Bidder (as the case may be) must give notice to the other party as soon as reasonably practicable (and in any event before 5.00pm on the Business Day before the Second Court Date) as to whether or not it waives the breach or non fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.
- (c) A waiver of such breach or non fulfilment in respect of one Condition Precedent will not constitute:
  - (i) a waiver of breach or non fulfilment of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of breach or non fulfilment of that Condition Precedent resulting from any other event.

### **3.7 Conditions Precedent not met**

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement; or
  - (ii) there is an act, failure to act, event or occurrence which will prevent a Condition Precedent being satisfied by the date specified in clause 3.1 for its satisfaction (and the breach or non-fulfilment of the Condition Precedent which would otherwise occur has not already been waived in accordance with this agreement),

Target and Bidder must consult in good faith with a view to:

- (iii) determining whether the Scheme may proceed by way of alternative means or methods;

- (iv) extending the time or date for satisfaction of the relevant Condition Precedent or Sunset Date; or
  - (v) changing the date of application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Target and Bidder (being a date no later than five Business Days before the Sunset Date).
- (b) If Target and Bidder are unable to reach agreement under clause 3.7(a) within the Required Consultation Period, either Target or Bidder may, provided that the relevant Condition Precedent is for the benefit of that party, terminate this agreement by notice in writing to the other without incurring any liability to the other party because of that termination.

### **3.8 Scheme voted down**

If the Scheme is not approved by the Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test, then Target must, if requested by Bidder (acting reasonably) and at the cost of the Bidder:

- (a) seek Court Orders approving the Scheme in accordance with section 411(4)(b) of the Corporations Act, notwithstanding the Headcount Test has not been satisfied; and
  - (b) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers are reasonably required to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test; and
  - (c) waive the Condition Precedent in clause 3.1(d),
- provided counsel engaged by Target believes that there is a serious prospect of success in obtaining the Court Orders.

### **3.9 Certificates in relation to Conditions Precedent and warranties**

- (a) On the Second Court Date:
  - (i) Target must provide to the Court a certificate confirming (in respect of matters within its own knowledge) whether or not as at 8am on the Second Court Date the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(f), 3.1(h), 3.1(j), 3.1(k), 3.1(m) and 3.1(o), have been satisfied or waived;
  - (ii) Bidder must provide to the Court a certificate confirming (in respect of matters within its own knowledge) whether or not as at 8am on the Second Court Date the Conditions Precedent in clauses 3.1(g), 3.1(i), 3.1(j), 3.1(l), 3.1(m), 3.1(n), 3.1(o), 3.1(p), 3.1(q) and 3.1(r) have been satisfied or waived.
- (b) On or before 8am on the date of the Scheme Meeting, each of Target and Bidder must provide to the other a certificate signed by two directors of that party confirming that, as at 8am on the date of the Scheme Meeting, there is no fact, matter or circumstance known to it that constitutes or may constitute a breach of any of the warranties given by its under clause 7.



## 4. The transaction steps

### 4.1 Overview

- (a) Target must propose the Scheme to Target Shareholders.
- (b) If the Scheme becomes Effective:
  - (i) all Scheme Shares will be transferred to Bidder in accordance with the terms of the Scheme; and
  - (ii) in consideration for the transfer to Bidder of all Scheme Shares held by the Scheme Shareholders, the Scheme Shareholders will receive the Scheme Consideration in accordance with clause 4.2 and the terms of the Scheme.

### 4.2 Scheme Consideration

- (a) Bidder undertakes to Target (in its own right and as trustee on behalf of the Scheme Shareholders) that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, Bidder will accept that transfer and issue to each Scheme Shareholder one Bidder Share for every two Scheme Shares held at the Record Date. Any fractional entitlement to a Bidder Share will be rounded down to the nearest whole Bidder Share.
- (b) Unless Bidder and Target are satisfied, acting reasonably, prior to the First Court Date, that the laws of all relevant jurisdictions permit the issue of Bidder Shares to a Foreign Shareholder, either unconditionally or after compliance with requirements that are not, in each of Bidder's and Target's reasonable opinions, unduly onerous, Bidder has no obligation to allot or issue Bidder Shares to the Foreign Shareholder and the Bidder Shares to which the Foreign Shareholder would otherwise be entitled will be allotted to a nominee appointed by Target who will sell those Bidder Shares and pay the proceeds received, after deducting any applicable brokerage, and taxes and charges, to that Foreign Shareholder.
- (c) All Bidder Shares issued under this clause 4.2 must, upon their issue:
  - (i) rank equally with all other Bidder Shares; and
  - (ii) be fully paid and free from any encumbrance.

### 4.3 Timetable

The parties acknowledge the Timetable is an indicative timetable and will consult with each other regularly, in good faith and in a timely and cooperative fashion, in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) the need to modify the Timetable.

## 5. Scheme implementation

### 5.1 Target's obligations in relation to the Scheme

Target must execute all documents and do all acts and things within its power as may be necessary for the implementation and performance of the Scheme on a basis consistent with this agreement and substantially in accordance with the Timetable, and in particular Target must:

- (a) **Agreed Announcement:** make its Agreed Announcement in accordance with clause 11.1;

- (b) **draft Scheme Booklet:** prepare a draft of the Scheme Booklet in accordance with clause 5.4;
- (c) **commission Independent Expert's Report:** promptly appoint an Independent Expert to provide a report for inclusion in the Scheme Booklet stating whether in its opinion the Scheme is in the best interests of Target Shareholders and Target must provide on a timely basis any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report;
- (d) **liaise with ASIC:** provide copies of the Regulator's Draft to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to Bidder, and liaise with ASIC throughout the Regulatory Review Period;
- (e) **keep Bidder informed:** during the Regulatory Review Period:
  - (i) promptly provide to Bidder and include in revised drafts of the Scheme Booklet any new information in relation to Target Group not included in the Regulator's Draft which is required by the Corporations Act or any ASIC Regulatory Guides and policies applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act to be included in the Scheme Booklet; and
  - (ii) promptly inform and consult with Bidder in relation to any material matters raised by ASIC in connection with the Scheme Booklet or the Scheme and, where necessary, co-operate with Bidder to resolve any such matters;
- (f) **approval of Scheme Booklet:** as soon as practicable after the end of the Regulatory Review Period, procure that a meeting of the Target Board is held to approve the Scheme Booklet for despatch to Target Shareholders, subject to approval of the Court, and also to approve an application to the Court for an order that the Scheme Meeting be convened by the despatch of the Scheme Booklet to Target Shareholders;
- (g) **Court direction and advice:** promptly apply to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting to consider the Scheme and take all reasonable steps necessary to comply with the orders of the Court;
- (h) **Despatch of Scheme Booklet:** request ASIC to register the Scheme Booklet in accordance with section 412(6) of the Corporations Act and then despatch a copy of the Scheme Booklet to each Target Shareholder and to all other persons entitled to receive notice of the Scheme Meeting;
- (i) **Update the Scheme Booklet:** if applicable and relevant approvals have been obtained, update the Scheme Booklet in accordance with clause 7.2(b);
- (j) **section 411(17)(b) Statement:** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (k) **Shareholder meetings:** promptly convene the Scheme Meeting in accordance with any orders which are made by the Court pursuant to section 411(1) of the Corporations Act;
- (l) **Court documents:** promptly prepare the documents required for the purpose of each Court hearing held, including for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and provide Bidder with drafts of those

documents for review and consult with Bidder in relation to the content of those documents and consider in good faith, for the purpose of amending drafts of those documents, all reasonable comments from Bidder and its Representatives on those documents;

- (m) **Court approval of Scheme:** as soon as practicable after Target Shareholders approve the Scheme at the Scheme Meeting, apply (and to the extent necessary, re-apply) to the Court for orders approving the Scheme under section 411(4)(b), and, if applicable, section 411(6), of the Corporations Act substantially in accordance with the Timetable;
- (n) **lodge copy of Court orders:** if the Court makes orders under section 411(4)(b) and, if applicable, section 411(6) of the Corporations Act approving the Scheme, lodge with ASIC an office copy of the order of the Court approving the Scheme under section 411(10) of the Corporations Act within one Business Day after such office copy is received or such later date as agreed in writing by Bidder;
- (o) **registration:** if the Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme:
  - (i) use reasonable endeavours to ensure that ASX suspends trading in Target Shares with effect from the close of trading on the Effective Date;
  - (ii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders;
  - (iii) promptly execute proper instruments of transfer of, and effect and register the transfer of Scheme Shares in accordance with the Scheme; and
  - (iv) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court.
- (p) **Share register:** promptly provide to Bidder a copy of the Target share register as requested by Bidder from time to time;
- (q) **ASX listing:**
  - (i) use its reasonable endeavours to ensure that the Target Shares continue to be quoted on ASX until the close of business on the Implementation Date; and
  - (ii) not request ASX to remove Target from the official list of ASX until after the Implementation Date in accordance with the directions of Bidder;
- (r) **Consultation and co-operation:** subject to the fiduciary and statutory duties of the directors of Target and provided that nothing in this paragraph requires the provision by any member of the Target Group or its Representatives of any information in breach of any obligation of confidentiality or any law, during the period from the date of this agreement to the Implementation Date, Target will:
  - (i) co-operate in good faith with Bidder in its efforts to promote the merits of the Scheme, including, where agreed to be appropriate, the parties acting reasonably:
    - (A) through communications with Target Shareholders; or
    - (B) holding meetings between Representatives of Target and key Scheme Shareholders at the reasonable request of Bidder; and
  - (ii) not, and will use reasonable endeavours to procure that the directors of Target do not, act in a manner adverse to the Scheme;

- (s) **Director and officer changes:** upon Implementation of the Scheme, appoint the nominees of Bidder as directors and officers of Target and each subsidiary of Target (subject to appropriate consents having been given);
- (t) **Escrow Deed:** before the First Court Date, enter into the Escrow Deed and procure the Demerger Entity to do so;
- (u) **Non Competition Deed:** before the First Court Date, enter into the Non Competition Deed and procure the members of the Demerger Group to do so;
- (v) **Schedule 3, payment of Target's lender/s and Retained Cash Amount:** ensure that the matters described in paragraphs 3 and 4 of Schedule 3 occur in accordance with their terms and otherwise comply with the Target's obligations in Schedule 3; and
- (w) **Schedule 3, Estimated Retained Cash Amount and funds remaining:** at least 5 Business Days prior to the Second Court Date, provide to the Bidder a written estimate as at Implementation of the Retained Cash Amount, each component of the calculation of the written estimate of the Retained Cash Amount and amounts payable to the holder of each encumbrance or security interest over any Target Assets referred to in clause 6.3(d) to secure a release of each such encumbrance or security interest as specified in the agreements referred to in clause 3.1(p).

## 5.2 Target's obligations in respect of the Demerger Scheme

Target must:

- (a) take all steps reasonably necessary to propose the Demerger Scheme and ensure the Demerger Scheme is implemented;
- (b) execute, and procure that counterparts execute, the Demerger Transaction Documents as soon as reasonably practicable after they are approved by the Bidder under clause 3.1(n), but no later than the date the Scheme Booklet is lodged with ASIC for regulatory review pursuant to clause 5.1(d) and not permit any changes to be made to the Demerger Transaction Documents without the consent of Bidder which shall not be unreasonably withheld or delayed; and
- (c) procure that each member of the Demerger Group enters into such documents as are necessary to give effect to any provision of this agreement that relates to such entity;
- (d) ensure that if both the Demerger Scheme and the Scheme are approved by Target Shareholders, implementation of the Demerger Scheme occurs prior to Implementation.

## 5.3 Bidder's obligations in relation to the Scheme

Bidder must execute all documents and do all acts and things within its power as may be reasonably necessary for the implementation and performance of the Scheme on a basis consistent with this agreement and substantially in accordance with the Timetable, and in particular Bidder must:

- (a) **preparation of Scheme Booklet:** provide assistance with the preparation of the Scheme Booklet in accordance with clause 5.4;
- (b) **assist Independent Expert:** promptly provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report to be sent together with the Scheme Booklet;
- (c) **review drafts of Scheme Booklet:** as soon as practicable after delivery, review drafts of the Scheme Booklet prepared by Target and provide any comments on those drafts in good faith;

- (d) **approval of Regulator's Draft:** as soon as practicable after finalisation of the proposed Regulator's Draft, Bidder must:
  - (i) approve the Bidder Information in the form and context in which it appears in the proposed Regulator's Draft as being in a form appropriate for provision to ASIC for review; or
  - (ii) provide Target with the textual changes required to ensure that the Bidder Information in the proposed Regulator's Draft is in a form appropriate for provision to ASIC for review;
- (e) **approval of Scheme Booklet:** as soon as practicable after the end of the Regulatory Review Period, Bidder must confirm to Target those sections of the Scheme Booklet that comprise the Bidder Information are appropriate for despatch to Target Shareholders, subject to the approval of the Court;
- (f) **Bidder Deed Poll:** prior to the despatch of the Scheme Booklet to Target Shareholders, execute the Bidder Deed Poll;
- (g) **representation:** procure that it has separate representation by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme and, to the extent that leave of the Court is required for Bidder to be present at those Court hearings, apply for that leave. Nothing in this agreement is to be taken to give Bidder any right or power to make or give undertakings to the Court for or on behalf of Target; and
- (h) **Schedule 3, payment of Target's lender/s and Retained Cash Amount:** comply with the Bidder's obligations in Schedule 3.

## 5.4 Scheme Booklet

- (a) The parties agree that:
  - (i) the efficient preparation of the Scheme Booklet is in the interests of the parties and Target Shareholders; and
  - (ii) they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to produce the Scheme Booklet as soon as reasonably practicable and in accordance with the Timetable.
- (b) Subject to Bidder complying with its obligations under clause 5.4(f), Target must prepare the Scheme Booklet as soon as is reasonably practicable after the date of this agreement and use all reasonable endeavours to do so in accordance with the Timetable.
- (c) Target must use reasonable endeavours to ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the Listing Rules and all ASIC Regulatory Guides and policies applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except in respect of the Bidder Information.
- (d) Target must make available to Bidder:
  - (i) drafts of the Scheme Booklet (including any draft of a report by the Independent Expert but excluding those sections containing the Independent Expert's opinions or conclusions) and consult with Bidder in relation to the content of those drafts,

and consider in good faith, for the purpose of amending those drafts, comments from Bidder and its advisers on those drafts received on a timely basis; and

- (ii) to the extent practical, the final proposed Scheme Booklet to be registered with ASIC pursuant to clause 5.1(h) no later than 2 Business Days prior to such registration.
- (e) Target must ensure that the Scheme Booklet includes statements that, subject to no superior proposal emerging and the Independent Expert concluding that the Scheme is in the best interests of the Target Shareholders:
  - (i) the directors of Target recommends the Scheme and that Target Shareholders vote in favour of the Scheme being approved; and
  - (ii) each director of Target who holds Target Shares or is able to control voting rights in relation to Target Shares intends to vote those shares or procure that those shares are voted in favour of the Scheme,

provided this accurately reflects the position of the directors of Target.

- (f) Bidder must:
  - (i) provide to Target such information regarding Bidder and the Bidder Group and other information as is required to ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the Listing Rules and all ASIC Regulatory Guides and policies applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act and any other relevant requirement.  
Bidder:
    - A. acknowledges that Target will rely on such information to prepare the Scheme Booklet;
    - B. agrees to make available to Target advance drafts of that information so that Target has a reasonable opportunity to review and comment on the information; and
    - C. agrees that the Bidder Information will be provided in good faith;
  - (ii) take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive, whether by omission or otherwise; and
  - (iii) provide to Target such assistance as Target may reasonably require in order to adapt such information for inclusion in the Scheme Booklet, including consideration in good faith of comments from Target in relation to the information;

as soon as reasonably practicable after the date of this agreement (and must use all reasonable endeavours to do so in accordance with the Timetable).

- (g) Bidder must reimburse Target (on an indemnity basis) for all costs incurred by the Target Group as a consequence of any information notified by the Bidder to the Target under clause 5.4(f) or 7.4(b) or any action by Bidder Group after any application is made by Target for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to consider or approve the Scheme which Target reasonably believes will require any variation of any documentation in relation to the Scheme or any additional application to the Court (after consultation with the Bidder).
- (h) From the First Court Date until the Implementation Date, each party must promptly inform the other if it becomes aware that the Scheme Booklet contains a statement that is or has become misleading or deceptive in a material respect or that contains a material omission.
- (i) The Scheme Booklet will include a statement:
  - (i) by Target that Bidder Indemnified Parties are not responsible for any information contained in the Scheme Booklet other than Bidder Information; and
  - (ii) by Bidder that Target Indemnified Parties are not responsible for any Bidder Information contained in the Scheme Booklet.
- (j) Target must undertake reasonable verification processes for the purposes of complying with clause 5.1(f).
- (k) Bidder must undertake reasonable verification processes for the purposes of complying with clause 5.3(e).
- (l) If there is a dispute as to the content of any part of the Scheme Booklet (including Bidder Information), the parties must consult in good faith and use their reasonable endeavours to resolve the dispute within two Business Days. If the parties fail to agree on the form or content of the Scheme Booklet:
  - (i) Target will have the final decision on the form or content of any Target Information, but, if requested to do so by Bidder, will include a statement from Bidder noting that it disagrees with the relevant information; and
  - (ii) Bidder will have the final decision on the form or content of any Bidder Information.

Even if there is a dispute as to the form or content of the Scheme Booklet and the parties use this procedure, the parties will continue to perform their obligations under this agreement.

## **5.5 Good faith co-operation**

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other party to implement the Scheme in accordance with the Timetable and to prepare all documents required relating to the Scheme.

## **5.6 Recommendation of the Target Board**

- (a) Target must authorise and issue the Agreed Announcement immediately following execution of this agreement which will include (on the basis of confirmations made to Target by each of its directors) a statement to the effect that each director of Target:

- (i) recommends the Scheme to Target Shareholders and that the Scheme be approved; and
  - (ii) who holds Target Shares or is able to control voting rights in respect of Target Shares intends to vote their Target Shares, or procure that those Target Shares are voted, in favour of the Scheme,
- subject to there being no superior proposal in respect of Target and the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders.
- (b) Subject to clause 5.6(d), Target must use reasonable endeavours to procure that the Target Board and each director of Target:
    - (i) does not change or withdraw the statements set out in the Agreed Announcement;
    - (ii) in the Scheme Booklet state that the Target Board recommends the Scheme and that Target Shareholders vote in favour of the Scheme being approved, in the absence of a superior proposal and the Independent Expert concluding that the Scheme is in the best interests of the Target Shareholders, and does not change or withdraw those statements or recommendations once made; and
    - (iii) does not make any public statement to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended as provided in the Agreed Announcement.
  - (c) Target represents and warrants to Bidder that it has been advised by all of the Target Directors that, subject to clause 5.6(d):
    - (i) they will recommend the Scheme and that Target Shareholders vote in favour of the resolution to be proposed at the Scheme Meeting to approve the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of the Target Shareholders;
    - (ii) if they hold Target Shares or are able to control voting rights in respect of Target Shares, they intend to vote their Target Shares, or procure that those Target Shares are voted, in favour of the Scheme; and
    - (iii) they will not make any public statement or take any other action that contradicts the recommendation of the Scheme by all of the Target Directors; and
    - (iv) the Scheme Booklet will state that:
      - (A) the Target Board unanimously recommends the Scheme to Target Shareholders and recommends to Target Shareholders that the Scheme be approved, in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interest of Target Shareholders; and
      - (B) all of the Target Directors who hold Target Shares, or on whose behalf Target Shares are held, intend to vote in favour of approving the Scheme in the absence of a superior proposal.
  - (d) Each Target Director may change, withdraw or modify his or her recommendation or make a public statement to the effect, or take any other action that suggests, that the Scheme is no longer so considered or recommended as provided in the Agreed Announcement if:
    - (i) the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target Shareholders; or



- (ii) Target receives a Competing Proposal that constitutes a Superior Proposal to the Scheme and Target has complied with its obligations under clause 13 and either:
  - (A) Bidder decides not to exercise its matching right in accordance with clause 13.6; or
  - (B) Bidder has exercised its matching right in accordance with clause 13.6 and Target has complied with its obligations under clause 13.6.

## **5.7 Court refuses to make orders**

If the Court refuses to make any orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to consider or approve the Scheme, Target must appeal the Court's decision to the fullest extent possible (with costs to be borne equally by Target and Bidder) except where:

- (a) the parties agree otherwise; or
- (b) Target is advised by its legal counsel that an appeal would have no reasonable prospect of success.

# **6. Conduct of Business**

## **6.1 Conduct of Target Business**

Subject to clause 6.3, from the date of this agreement until the Implementation Date, Target must:

- (a) and must procure that its Subsidiaries will, or cause the operator thereof to administer and operate, the Target Assets in accordance with the applicable operating agreements and laws, and in a good and workmanlike manner consistent with past practice;
- (b) not, and must procure that its Subsidiaries will not sell, transfer, convey nor grant any option over any interest in the Target Assets;
- (c) procure that its Subsidiaries will, operate the Target Assets so as to ensure that no Target Prescribed Occurrence or Target Material Adverse Change occurs;
- (d) maintain in force policies of insurance with respect to the Target Assets currently in effect;
- (e) not introduce any new methods of management, operation or accounting with respect to any or all of the Target Assets;
- (f) maintain, or cause the operator to maintain, the Leases in force and effect and comply with all express and implied covenants therein, and use commercially reasonable efforts to maintain and keep the other Target Assets in full force and effect; and fulfill all contractual or other covenants, obligations and conditions imposed upon Target with respect to the Target Assets;
- (g) to the extent known to Target, provide Bidder with written notice of (i) any claims, demands, suits or actions made against Target which could materially affect the Target Assets, or (ii) any material default under any Material Contract; or (iii) any proposal from a third party to engage in any material transaction (e.g., a farmout) with respect to the Target Assets;
- (h) provide to Bidder all information reasonably requested by Bidder with respect to the wells described in Schedule 2 proposed to be drilled by Target, and obtain Bidder's consent prior to making any election under an applicable joint operating agreement to complete, sidetrack or redrill any such well; and

- (i) comply with the Drilling Program and not spend the funding obtained from finance for any purpose other than permitted by clause 6.3(d).

## **6.2 Certain Target Group actions requiring consent of Bidder**

Subject to clause 6.3 but without limiting clause 6.1, from the date of this agreement up to and including the Implementation Date, Target must not, and must ensure that each other member of the Target Group does not:

- (a) dispose or agree or offer to dispose of or encumber any of the Target Assets (other than replacement of equipment or sale of Hydrocarbons produced from the Target Assets in the ordinary course of business),
- (b) terminate, materially amend, extend or enter into any new material contracts;
- (c) acquire or agree or offer to acquire any one or more assets, businesses or entities, the value of which exceeds \$100,000, from any person other than a member of the Target Group (but expressly excluding any of the foregoing to the Fairly Disclosed by the Target to the Bidder in writing prior to the date of this agreement);
- (d) allow Target or a Target Subsidiary to:
  - (i) enter into an employment contract with a potential employee (other than to replace on substantially similar terms (including as to remuneration and benefits) an employee who has ceased to be an employee of Target or a Target Subsidiary); or
  - (ii) enter into a new employment contract with, or amend an employment contract of, an existing employee of Target or a Target Subsidiary
- (e) either:
  - (i) appoint a person to act as a director of a member of the Target Group; or
  - (ii) enter into a new appointment agreement with, or amends the appointment terms of, an existing director of a member of the Target Group;
- (f) settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the amount claimed by or against a member of the Target Group exceeds \$100,000, except where such settlement would not directly or indirectly have the effect of diminishing the Target Assets;
- (g) enter, or propose to enter, into or amend, or propose to amend, in any material respect any joint venture, partnership or other agreement with any person other than a member of the Target Group involving or reasonably likely to involve expenditure or other commitment on the part of a member of the Target Group in excess of \$100,000;
- (h) incur any indebtedness in excess of \$100,000 or issue any debt securities in relation to a debt in excess of \$100,000, other than as permitted by clause 6.3(d) below;
- (i) enter into, terminate, extend, renew or vary any commitment (including any non-contractual commitment or undertaking) which has a value or involves a liability or expenditure, as the case may be, of \$100,000 or more, or any commitment which, when aggregated with related transactions, is in aggregate \$100,000 or more;
- (j) exercise a contractual right or other option to renew or extend, or otherwise renewing or extending, an existing agreement (including under any lease) which has a value or involves a liability or expenditure, as the case may be, of \$100,000 or more, or any number of which, when aggregated with related transactions, is in aggregate \$100,000 or more;

- (k) increase the remuneration of, or otherwise varying the employment arrangements with, any of its directors or executives or any other employees which employee's total annual employment cost is in excess of \$100,000;
- (l) pay or agree to pay any bonus to any of its directors or executives or any other employees other than any bonus already accrued as at the date of this agreement and notified in writing by Target to Bidder before the date of this agreement;
- (m) accelerate the rights of any of its directors or executives or any employee to benefits of any kind including under any executive or employee share plans;
- (n) pay or agree to pay a director or executive a termination payment (including a "golden parachute");
- (o) enter into any guarantee or indemnity on behalf of any person other than a member of the Target Group or provide security for the obligations of any person other than a member of the Target Group of in excess of \$100,000;
- (p) pay any retirement allowance or superannuation benefit to any director or employee, except for any payment required by law or under an existing contractual obligation fairly disclosed to Bidder prior to the date of this agreement;
- (q) agree or commit to participate (or agree or commit or otherwise decide not to participate) in any drilling or in any well, where the value of such agreement or commitment is reasonably likely to exceed \$100,000;
- (r) voluntarily relinquish its position as operator with respect to any of the Wells or voluntarily abandon any of the Wells other than as required pursuant to the terms of a Lease or by law; or
- (s) authorise, commit or agree to do any of the matters set out above.

### 6.3 Permitted activities

Nothing in clause 6.1 or clause 6.2 restricts Target or any of its Subsidiaries from:

- (a) doing anything:
  - (i) it is required to do, permitted to do, or is permitted not to do, under any provision of this agreement or the Scheme, or which is otherwise contemplated by this agreement or the Scheme;
  - (ii) as may be undertaken with the prior approval of Bidder, such approval not to be unreasonably withheld or delayed;
  - (iii) as required by law or a Regulatory Authority;
  - (iv) if an existing contractual obligation of any member of Target Group requires otherwise and that obligation has been Fairly Disclosed in writing to Bidder by Target before the date of this agreement;
  - (v) relating to settlement of any legal proceedings involving the Target Group or any Demerger Entity where the settlement paid or received by the Target Group is \$100,000 or less; or
  - (vi) as Fairly Disclosed in writing by Target to Bidder in the Target Due Diligence Information before the date of this agreement;
- (b) doing anything that is required to give effect to the Demerger Scheme;

- (c) doing anything in respect of the Demerged Assets and Liabilities or Demerger Entity determined by Target in its absolute discretion, so long as it does not create or enhance any liability (actual, contingent or otherwise) of Target or a Target Subsidiary that would exist on or after the Implementation Date of the Scheme; and
- (d) committing to participate in and undertaking any component of the Permitted EFS Activities, entering into debt financing facilities with a lender, and/or encumbering its interests in the Target Assets in favour of third party lenders (but not a third party lender who is a member of the Target Group) insofar as are reasonably necessary to finance the Permitted EFS Activities and provided that:
  - (i) the funding from the finance facilities is used solely to fund capital expenditure on development and production assets as part of the Permitted EFS Activities which relates to the Target Assets and for no other purpose; and
  - (ii) the Target has first complied with its obligations under clauses 6.1(h) and 6.1(i) and Schedule 2;

## 6.4 Conduct of Bidder Business

From the date of this agreement until the Implementation Date, Bidder must, and must procure that its Subsidiaries will operate their businesses,

- (a) in the ordinary course consistent with past practice; and
- (b) so as to ensure that no Bidder Prescribed Occurrence or Bidder Material Adverse Change occurs.

For the avoidance of doubt, nothing in this clause 6.4 would prevent Bidder or its Subsidiaries from taking any action (including, but not limited to, acquiring or selling any asset, business or entity, incurring any debt, taking advantage of any opportunity, expending any funds, or employing or terminating the employment of, or varying the employment terms of, any employee) to the extent that such action does not constitute a Bidder Prescribed Occurrence or Bidder Material Adverse Change.

## 6.5 Access

- (a) Subject to clause 6.5(b), between the date of this agreement and the earlier of the Implementation Date, the Sunset Date and the date this agreement is terminated (the **Relevant Period**), Target must (and must procure that each of its Subsidiaries), as soon as reasonably practicable following any written request made by Bidder, provide Bidder and its Representatives with reasonable access to:
  - (i) the books, documents, records, management accounts, financial statements and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws and issues of legal privilege) of any member of the Target Group;
  - (ii) the Representatives (including auditors) of any member of the Target Group; and
  - (iii) each of the Properties,
 in each case only to the extent that the Bidder reasonably requires for the purposes of:
  - (iv) implementing the Scheme;
  - (v) confirming the accuracy of any representation or warranty given by Target under this agreement;
  - (vi) determining whether the Condition Precedent in clause 3.1(k) has been satisfied;

- (vii) planning for the operation of the Target Group under the control of Bidder; or
  - (viii) any other purpose which is agreed in writing between the parties,
- provided in every case that such provision or access does not place an unreasonable burden on the ability of Target to run its business or breach any law or regulation and reasonable notice of the request has been provided.
- (b) The obligations in clause 6.5(a):
    - (i) do not require Target to:
      - (A) provide information to Bidder concerning the directors of Target and Target's management's consideration of the Scheme or any Competing Proposal or any of the Demerged Assets and Liabilities to the extent they are not relevant to obligations of the Target Group other than the Demerger Group; or
      - (B) breach an obligation of confidentiality to any person; and
    - (ii) are subject to the proper performance of by Target directors of their fiduciary and statutory duties in relation to a Competing Proposal.

## 7. Representations, warranties and undertakings

### 7.1 Target representations and warranties

Target represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each Bidder Indemnified Party) that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Target Group is a corporation validly existing under the laws of its place of incorporation and is duly qualified to do business in all the states in which such qualification is required;
- (b) **power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise the entry into of this agreement and has taken all necessary corporate action to authorise the performance of this agreement and to carry out the transactions contemplated by this agreement;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles of equity) this agreement is valid and binding upon it;
- (e) **solvency:** neither it nor any other member of the Target Group is affected by an Insolvency Event;
- (f) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;
- (g) **no default:** this agreement does not result, and the performance of this agreement and implementation of the Scheme and the Demerger will not result, in a breach of or default under any provision of Target's constitution or a breach of or default by any member of the Target Group (other than any member of the Demerger Group) under any material

term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Target is party or subject or of which it or any member of Target Group is bound;

- (h) **disclosure:** so far as the Target Directors are aware, Target is not in breach of its continuous disclosure obligations under the Corporations Act and the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure other than disclosed in writing to Bidder or its Representatives on or before the date of this agreement;
- (i) **issued securities:** the issued Target securities as of the date of this agreement are:
  - (i) 245,039,848 Shares; and
  - (ii) the Existing Options,and Target Group has not issued, or agreed to issue, any other securities or instruments which are still in force and may convert into Target Shares or any other securities in Target;
- (j) **no downstream acquisition:** the Target Group does not have a relevant interest (as defined in the Corporations Act) in more than 20 per cent of the voting shares in any listed entity or in any unlisted entity with more than 50 members; and
- (k) **Target Assets and other matters:** each of the representations and warranties in **Schedule 5** is true, subject to any matter or issue that was Fairly Disclosed in any Public Register or Fairly Disclosed in writing by the Target to Bidder before the date of this agreement.

## 7.2 Target undertakings

Target undertakes to Bidder that:

- (a) **Target Information:** as at the date of the Scheme Booklet, Target Information will:
  - (i) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all ASIC Regulatory Guides and policies applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act; and
  - (ii) not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements; and
- (b) **updating information:** it will, as a continuing obligation, provide Bidder all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting, and, subject to obtaining any necessary approvals, update the Scheme Booklet as soon as reasonably practicable with all such further or new information, which may be reasonably required to ensure there would be no breach of clause 7.2(a) if it applied as at the date upon which that information arose;
- (c) **events:** it will use reasonable endeavours to procure that no Target Prescribed Occurrence or Target Material Adverse Change occurs.

## 7.3 Bidder representations and warranties

Bidder represents and warrants to Target (on its own behalf and separately as trustee or nominee for each Target Indemnified Party) that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and it and its Subsidiaries are duly qualified to do business in all the states in which such qualification is required;

- (b) **corporate power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise the entry into of this agreement and the Bidder Deed Poll and has taken all necessary corporate action to authorise the performance of this agreement and the Scheme and to carry out the transactions contemplated by this agreement and the Scheme;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles or equity) this agreement is valid and binding upon it;
- (e) **solvency:** neither it nor any other member of the Bidder Group is affected by an Insolvency Event;
- (f) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement;
- (g) **no default:** this agreement does not result, and the performance of this agreement and implementation of the Scheme will not result, in the breach of or default under any provision of Bidder's constitution, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which bidder is party or subject or of which it or any member of Bidder Group is bound; and
- (h) **current shareholding:** as at the date of this agreement:
  - (i) it is not the registered holder of any Target Shares;
  - (ii) it does not have a relevant interest in any Target Shares;
  - (iii) its voting power in Target's issued share capital is nil; and
  - (iv) its Associates are not the registered holders of any Target Shares.

## 7.4 Bidder undertakings

Bidder undertakes to Target that:

- (a) **Bidder Information:** Bidder Information to be provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will:
  - (i) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all ASIC Regulatory Guides and policies applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act; and
  - (ii) not contain any material statement which is misleading or deceptive, nor contain any material omission, having regard to applicable disclosure requirements;
- (b) **updating information:** it will, as a continuing obligation, provide to Target all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which is necessary to ensure there would be no breach of clause 7.4(a) if it applied on the date on which the information arose; and
- (c) **events:** it will use reasonable endeavours to procure that no Bidder Prescribed Occurrence or Bidder Material Adverse Change occurs.

## 7.5 Timing of representations and warranties

Each representation and warranty made or given under clause 7.1 and clause 7.3 is given:

- (a) at the date of the agreement and every day up to and including 8.00am on the Second Court Date; or
- (b) where expressed, at the time at which the representation or warranty is expressed to be given.

## 7.6 Survival of representations and warranties

Each representation and warranty in clauses 7.1 and 7.3:

- (a) is severable;
- (b) will survive Implementation or the termination of this agreement; and
- (c) is given with the intent that liability under them will not be confined to breaches which are discovered prior to the date of termination of this agreement.

## 7.7 Limits on claims for breach of certain representations and warranties

Without prejudice to the Bidder's right to terminate this agreement pursuant to 9.1(c)(i), or to claim an amount under clause 10.2(a)(i), due to any breach of the representations and warranties in **Schedule 5**:

- (a) the Bidder will not be entitled to claim under the Escrow Deed for a breach of the representations and warranties in **Schedule 5** unless:
  - (i) the amount of the claim for breach of the representations and warranties in **Schedule 5 (Warranty Claim)** is at least \$50,000; and
  - (ii) Bidder gives notice (**Claim Notice**) of the Warranty Claim to the Demerger Entity within 6 months after the Implementation Date and, if the Claim has not already been satisfied, settled or withdrawn, legal proceedings for the Claim have been properly issued and served within 6 months after the date the Demerger Entity receives the Claim Notice; and
- (b) the maximum aggregate liability (including legal costs and expenses incurred in defending a claim from a third party) as a result of Warranty Claims of at least \$50,000 and claims under the indemnity in clause 8.1 in respect of any breach of a representation or warranty in clause 7.1(k) is limited to:
  - (i) if Implementation occurs, the amount the subject of the Escrow Deed; or
  - (ii) if Implementation does not occur, \$1,500,000.

# 8. Indemnities and payment of Claims from Escrow under Escrow Deed

## 8.1 Indemnity from Target

Target indemnifies Bidder and the other Bidder Indemnified Parties from and against all Claims which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties given by Target in clause 7.1 or any undertaking given by Target in clause 7.2, provided that, without prejudice to the Bidder's right to terminate this agreement pursuant to 9.1(c)(i) and to claim an amount under clause 10.2(a)(i) due to any breach of a representation or warrant given by Target in clause 7.1 (but subject to clause 10.4):

- (a) the amount of a claim under this indemnity is at least \$50,000;
- (b) the maximum aggregate liability (including legal costs and expenses incurred in defending a claim from a third party), as a result of a claim under this indemnity in respect of a



breach of a representation or warranty in clause 7.1(k) and any Warranty Claims of at least \$50,000 is limited to:

- (i) if Implementation occurs, the amount the subject of the Escrow Deed; or
  - (ii) if Implementation does not occur, \$1,500,000 to the amount the subject of the Escrow Deed; and
- (c) Bidder gives notice (**Indemnity Claim Notice**) of the claim under this indemnity to the Demerger Entity within 6 months after the Implementation Date and, if the claim under this indemnity has not already been satisfied, settled or withdrawn, legal proceedings for the claim have been properly issued and served within 6 months after the date the Demerger Entity receives the Indemnity Claim Notice.

## 8.2 Indemnity from Bidder

Bidder indemnifies:

- (a) Target and the other Target Indemnified Parties from and against all Claims which any of the Target Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties given by Bidder in clause 7.3 or any undertaking given by Bidder in clause 7.4; and
- (b) the Demerger Group from and against all Claims which the Demerger Group may suffer or incur by reason of any failure of the Target or a target Subsidiary to pay any amount in respect of the obligations in paragraphs 2 (e), (f), (g), (i), (j), (l), (n) and (q) of Schedule 3 which is accrued but not paid at Implementation.

## 8.3 Nature of indemnities

Each indemnity in clauses 8.1 and 8.2 is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or completion of this agreement or Implementation. Clause 8.5 survives Implementation. It is not necessary for a person to incur expense or make any payment before enforcing a right of indemnity in this clause 8. The making of a claim by a person under an indemnity in this clause 8 in respect of a particular event does not preclude that person from subsequently making further claims under that indemnity in respect of any further loss arising out of the same event for which it has not previously been indemnified.

## 8.4 Benefit

- (a) The indemnities given and made by Bidder in this clause 8 are given to Target on its own behalf and separately as trustee for each of the Target Indemnified Parties.
- (b) The indemnities given and made by Target in this clause 8 are given to Bidder on its own behalf and separately as trustee for each of the Bidder Indemnified Parties.

## 8.5 Payment of claims from escrow under Escrow Deed

All Claims after Implementation which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties given by Target in clause 7.1 or any undertaking given by Target in clause 7.2 will be paid in accordance with the terms of the Escrow Deed. Bidder will be entitled to claim under the Escrow Deed as its first recourse in respect of any such Claim after Implementation. Bidder will not be required to prove that Target has defaulted in paying such a Claim before being entitled to claim against Escrow Deed.

## 9. Termination rights

### 9.1 Termination events

Without limiting any other provision of this agreement:

- (a) either party (**non-defaulting party**) may terminate this agreement by notice in writing to the other party before 8.00am on the Second Court Date if each of the following has occurred:
  - (i) the other party (**defaulting party**) is in material breach of a provision of this agreement (other than for breach of a representation or warranty in clause 7.1 or clause 7.3) at any time prior to 8.00am on the Second Court Date;
  - (ii) the non-defaulting party has given notice to the defaulting party setting out the relevant circumstances of the breach and stating an intention to terminate the agreement; and
  - (iii) the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 11.59pm on the Business Day before the Second Court Date) from the time the notice in clause 9.1(a)(ii) is given; or
- (b) either party may terminate this agreement:
  - (i) in accordance with clause 3.7(b); or
  - (ii) if the Scheme has not been Implemented by the Sunset Date, or becomes incapable, for any reason, of being Implemented by the Sunset Date, provided that the party seeking to terminate is not solely responsible (as between the parties) for preventing the Scheme from being Implemented by the Sunset Date; or
- (c) Bidder may terminate this agreement by notice in writing to Target before 8.00am on the Second Court Date if:
  - (i) Target breaches any representation or warranty in clause 7.1 in a material respect and the breach cannot be remedied by subsequent action on the part of Target before 8.00am on the Second Court Date; or
  - (ii) at any time prior to the date of the Scheme Meeting, any of the Target Directors:
    - (A) fails to recommend the Scheme to Target Shareholders and that the Scheme be approved, or changes (including by attaching any qualifications to) or withdraws their recommendation for the Scheme and that Target Shareholders vote in favour of the Scheme or makes a public statement indicating that they no longer support the Scheme;
    - (B) recommends, promotes or otherwise endorses a Competing Proposal, whether or not in accordance with clause 5.6(d)(ii); or

- (C) states an intention to change their voting intention in respect of any of their Target Shares (or any Target Shares that they can control the voting of), whether or not in accordance with clause 5.6(d)(ii); or
  - (iii) at any time prior to the date of the Scheme Meeting, the Independent Expert concludes (whether in its original or subsequent opinion) that the Scheme is not in the best interests of Target Shareholders; or
  - (iv) at the Scheme Meeting or any adjournment or postponement of it at which the Scheme is voted on, the Scheme is not approved by the requisite majorities of Target Shareholders required under the Corporations Act; or
- (d) Target may terminate this agreement by notice in writing to Bidder before 8.00am on the Second Court Date if:
- (i) Bidder breaches any representation or warranty in clause 7.3 in a material respect and the breach cannot be remedied by subsequent action on the part of Bidder before 8.00am on the Second Court Date; or
  - (ii) at any time prior to the date of the Scheme Meeting, a majority of the Directors of Target have adversely changed (including by attaching any qualifications to) or withdrawn their recommendation in accordance with clause 5.6(d)(ii); or
  - (iii) at any time prior to the date of the Scheme Meeting, the Independent Expert concludes (whether in its original or subsequent opinion) that the Scheme is not in the best interests of Target Shareholders; or
  - (iv) at the Scheme Meeting or any adjournment or postponement of it at which the Scheme is voted on, the Scheme is not approved by the requisite majorities of Target Shareholders required under the Corporations Act (unless clause 3.8 applies).

## 9.2 Notice of breach

Each party must give notice to the other as soon as practicable after it becomes aware of a breach by it of this agreement (including in respect of any representation or warranty).

## 9.3 Termination right

- (a) Any right to terminate this agreement ceases when the Scheme becomes Effective.
- (b) The right of either party to terminate this agreement is not an exclusive remedy, and either party shall be entitled, in appropriate circumstances, to any other remedy available under this agreement or applicable law.

## 9.4 Effect of termination

- (a) If a party terminates this agreement, each party will be released from all further obligations under this agreement other than under clauses 1, 10, 11, 12, 15 and 16.
- (b) Termination of this agreement does not affect any accrued rights or remedies of a party (including in respect of any past breach of this agreement by the other party).

## 10. Break fee

### 10.1 Background

- (a) The parties believe the Scheme will provide significant benefits to Target and Bidder and their respective shareholders and acknowledge that they will each incur significant costs in connection with performing their obligations under this agreement and the Scheme.
- (b) In these circumstances:
  - (i) Bidder has requested that provision be made in this agreement for the payment set out in clause 10.2, without which it would not have entered into this agreement and Target believes that it is appropriate to agree to the payment which it agrees to make under this clause 10 in order to secure the participation of Bidder in the Scheme; and
  - (ii) Target has requested that provision be made in this agreement for the payment set out in clause 10.3, without which it would not have entered into this agreement and Bidder believes that it is appropriate to agree to the payment which it agrees to make under this clause 10 in order to secure the participation of Target in the Scheme.
- (c) The parties acknowledge that the amount they each agree to pay under this clause 10 is an amount which is appropriate to compensate the other for their reasonable external and internal costs and opportunity costs in connection with the Scheme.

### 10.2 Payment by Target to Bidder

- (a) Target must pay Bidder \$1 million (exclusive of GST) if:
  - (i) Target is in material breach of any provision of this agreement (including a breach of a representation or warranty under clause 7.1) and this agreement is terminated by Bidder in accordance with clause 9.1(a); or
  - (ii) any member of the Target Board adversely changes (including by attaching any qualifications to) or withdraws their recommendation of the Scheme or make any public statement that they have adversely changed, qualified or withdrawn their recommendation of the Scheme, or make an announcement in support of a Competing Proposal or announces an intention to do any of those acts, other than in circumstances:
    - (A) where Bidder is in material breach of any provision of this document (including a material breach of a representation or warranty under clause 7.3); or
    - (B) where the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target Shareholders other than because of the existence of a Superior Proposal; or
  - (iii) the Target Board or any member of it recommends a Competing Proposal, other than in circumstances:
    - (A) where Bidder is in material breach of any provision of this agreement (including a material breach of a representation or warranty under clause 7.3); or
    - (B) where the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target

Shareholders other than because of the existence of a Superior Proposal);  
or

- (iv) Bidder validly terminates this agreement under clause 9.1(b) as a consequence of the Condition Precedent in clause 3.1(f) (Target Prescribed Occurrence) not being satisfied or waived, other than in circumstances:
  - (A) where Bidder is in material breach of any provision of this document (including a material breach of a representation or warranty under clause 7.3); or
  - (B) where the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of Target Shareholders other than because of the existence of a Superior Proposal,

provided that no amount shall be payable under this clause 10.2 if the Scheme (or a transaction the subject of clause 13.6) is implemented with Bidder.

- (b) Target must pay Bidder the amount referred to in clause 10.2(a) within 20 Business Days after receipt by Target from Bidder of a demand for payment.

### **10.3 Payment by Bidder to Target**

- (a) Bidder must pay Target \$1 million (exclusive of GST) if Bidder is in material breach of any provision of this agreement (other than a material breach of a representation or warranty under clause 7.3) and this agreement is terminated by Target in accordance with clause 9.1(a), provided that no amount shall be payable under this clause 10.3 if the Scheme (or a transaction the subject of clause 13.6) is implemented with Target.
- (b) Bidder must pay Target the amount referred to in clause 10.3(a) within 20 Business Days after receipt by Bidder from Target of a demand for payment.

### **10.4 Exclusive remedy**

Each party agrees that if an amount is paid by the other as required under this clause 10 in respect of an act or event referred to therein, that payment constitutes its sole and exclusive remedy for any liability arising under or in connection with this agreement in respect of that act or event except in relation to wilful misconduct or wilful default by a party, in which circumstances the other party shall retain all rights and remedies it has or may have against Target in connection with this agreement in respect of that act or event in excess of any payment made under this clause 10.

### **10.5 Compliance**

A payment under this clause 10 is not required to be made or, if already made, is refundable, to the extent that making such payment is determined by a court to be unlawful, a breach of fiduciary or statutory duties of the entity making the payment or is determined by the Takeovers Panel to constitute unacceptable circumstances within the meaning of that phrase in the Corporations Act.

### **10.6 Gross up**

If a party is required by law to make any deduction or withholding from any payment under this clause 10, it must notify the other party of the amount and reason for the deduction or withholding and pay or procure the payment of the full amount of the deduction or withholding to the appropriate Regulatory Authority within the applicable timeframe for payment.

## **11. Public announcements**

### **11.1 Agreed Announcement**

Immediately following the execution of this agreement, Target must release the Agreed Announcement, which has attached to it a summary of the key terms of this agreement, or a copy of this agreement.

### **11.2 Public announcements**

- (a) Each party must use its best endeavours to consult with the other parties prior to making any public announcement in relation to the Scheme.
- (b) Where a party is required by law, the Listing Rules or other applicable stock exchange regulation, to make any announcement or make any disclosure in relation to the Scheme, to the extent practicable in the circumstances, it will only do so following consultation with the other party.
- (c) Nothing in this clause 11.2 precludes communications or disclosures necessary to implement the provisions of this agreement or to comply with or satisfy legal requirements or legal obligations imposed on the parties.
- (d) This clause 11.2 does not apply in the event of any release or announcement made by Target that relates to a Competing Proposal.

### **11.3 Statements on termination**

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 11.1 applies to any such statements or disclosures.

## **12. Standstill and reliance**

### **12.1 No purchase or acquisition of shares in Target**

Other than pursuant to the Scheme, Bidder agrees that, during the period from the date of this agreement to the earlier of the Implementation Date and 12 months after the date of termination of this agreement, it will not (and will ensure that members of the Bidder Group will not) without Target's prior written consent acquire, or dispose of, any relevant interest in, or an economic, synthetic or derivative interest in, any Target Shares.

### **12.2 No purchase or acquisition of shares in Bidder**

Target agrees that, during the period from the date of this agreement until 12 months after the date of termination of this agreement, it will not (and will ensure that members of the Target Group will not) without Bidder's prior written consent acquire, or dispose of, any relevant interest in, or an economic, synthetic or derivative interest in, any Bidder Shares.

### **12.3 Due diligence investigations**

- (a) Bidder acknowledges on its own behalf and on behalf of each of its Representatives that:
  - (i) prior to entry into this agreement, it and its Representatives have undertaken (but not concluded) due diligence investigations in relation to Target and have conducted discussions with Target and certain of its Representatives; and
  - (ii) in the course of those investigations and the negotiations and discussions prior to entry into this agreement, Target and its Representatives have provided to Bidder the Target Due Diligence Information.
- (b) Target acknowledges on its own behalf and on behalf of each of its Representatives that:

- (i) prior to entry into this agreement, it and its Representatives have undertaken but not concluded due diligence investigations in relation to Bidder and have conducted discussions with Bidder and certain of its Representatives; and
- (ii) in the course of those investigations and the negotiations and discussions prior to entry into this agreement, Bidder and its Representatives have provided to Target certain due diligence information.

## 12.4 Forward looking information

- (a) Bidder acknowledges on its own behalf and on behalf of each of its Representatives that each of Target and its Representatives (unless otherwise stated in this agreement or agreed in writing with Target and its Representatives) makes no representation or warranty in respect of any Forward Looking Information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and Bidder expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other considerations that may have determined or influenced the decision of Bidder to enter into this agreement).
- (b) Target acknowledges on its own behalf and on behalf of each of its Representatives that each of Bidder and its Representatives (unless otherwise stated in this agreement or agreed in writing with Bidder and its Representatives) makes no representation or warranty in respect of any Forward Looking Information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and Target expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other considerations that may have determined or influenced the decision of Target to enter into this agreement).

## 12.5 Own enquiries

- (a) Bidder hereby acknowledges and agrees on its own behalf and on behalf of each of its Representatives, that:
  - (i) Bidder has made its own independent assessment of all due diligence information provided to it by Target;
  - (ii) in relation to Forward Looking Information contained in the due diligence information provided by Target to Bidder:
    - (A) there are uncertainties inherent in attempting to prepare the Forward Looking Information and Bidder is familiar with these uncertainties;
    - (B) Bidder is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Forward Looking Information (including the reasonableness of any assumptions and contingencies which may affect the Forward Looking Information); and
    - (C) without prejudice to any rights of Bidder to claim in respect of a breach of any covenant, representation or warranty set out under this agreement, neither Target nor any of its Representatives is liable under any Claim arising out of or in connection with any party's use or disclosure of any such Forward Looking Information other than a Claim arising out of the fraud, wilful misconduct or wilful default of Target.

- (b) Target hereby acknowledges and agrees on its own behalf and on behalf of each of its Representatives, that:
  - (i) Target has made its own independent assessment of all Bidder due diligence information;
  - (ii) in relation to Forward Looking Information contained in such Bidder due diligence information:
    - (A) there are uncertainties inherent in attempting to prepare the Forward Looking Information and Target is familiar with these uncertainties;
    - (B) Target is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Forward Looking Information (including the reasonableness of any assumptions and contingencies which may affect the Forward Looking Information); and
    - (C) without prejudice to any rights of Target to claim in respect of a breach of any covenant, representation or warranty set out under this agreement, neither Bidder nor any of its Representatives is liable under any Claim arising out of or in connection with any party's use or disclosure of any such Forward Looking Information other than a Claim arising out of the fraud, wilful misconduct or wilful default of Bidder.

## 12.6 Acknowledgments

- (a) Bidder acknowledges and agrees with Target Group that:
  - (i) the warranties set out in clause 7.1 are the only warranties that Bidder requires, and on which Bidder has relied, in entering into this agreement; and
  - (ii) to the extent permitted by law, all other warranties, representations and undertakings (whether express or implied and whether oral or in writing) made or given by Target or any of its Representatives are expressly excluded.
- (b) Target acknowledges and agrees with Bidder that:
  - (i) the warranties set out in clause 7.3 are the only warranties that Target requires, and on which Bidder has relied, in entering into this agreement; and
  - (ii) to the extent permitted by law, all other warranties, representations and undertakings (whether express or implied and whether oral or in writing) made or given by Bidder or any of its Representatives are expressly excluded.

## 13. Exclusivity

### 13.1 Terminate existing discussions

During the Exclusivity Period, Target must terminate any discussions currently taking place between it and any person, other than Bidder, concerning the Scheme or any transaction similar to the Scheme (including any transaction involving a takeover bid or scheme of arrangement which would result in a change of Control of Target or any sale of a material interest in the Target Assets).

### 13.2 No-shop

During the Exclusivity Period, Target must not solicit, initiate or encourage any enquiries or proposals of any person (other than Bidder) concerning the Scheme or any transaction similar to the Scheme (including any transaction involving a takeover bid or scheme of arrangement which



would result in a change of Control of Target or any sale of a material interest in the Target Assets).

### **13.3 No-talk**

During the Exclusivity Period, Target must not respond to any enquiries or proposals of any person (other than Bidder) concerning the Scheme or any transaction similar to the Scheme (including any transaction involving a takeover bid or scheme of arrangement which would result in a change of Control of Target or any sale of a material interest in the Target Assets), unless the Target Directors determine, acting in good faith and having received written legal advice from Target's legal advisors, that such enquiry or proposal constitutes a Superior Proposal or be could reasonably be expected to result in a Superior Proposal being made having regard to steps that the Target proposes to take and other relevant circumstances.

### **13.4 No due diligence**

During the Exclusivity Period, Target must not provide any assistance to any person or entity (other than Bidder) to enable that person or entity to conduct due diligence on Target (other than a prospective debt financier), unless:

- (a) Target has first received an enquiry or proposal as contemplated in clause 13.3 which the Target Directors determine, acting in good faith, is bona fide; and
- (b) the Target Directors determine, acting in good faith and having received written legal advice from Target's legal advisors to that effect, that failing to provide such assistance would be likely to involve a breach of the fiduciary or statutory duties owed by a Target Director.

### **13.5 Notification**

If Target or, so far as it is aware, any of its Representatives is approached (directly or indirectly) during the Exclusivity Period by any person to engage in any activity, or take any other action, that would breach Target's obligations under clause 13.1 to 13.4 (or would breach its obligations under those clauses but for the operation of clause 13.7) Target must promptly inform Bidder in writing of the fact of that approach, if the Target proposes to take some action of the type referred to in clauses 13.3 or 13.4 in relation to the approach.

Nothing in this clause 13.5 prevents the Target from communicating to the entity approaching the Target that:

- (a) the Target must comply with its obligations under this agreement including this clause 13.5; or
- (b) the Target is required to, and will be, notifying the Bidder, in accordance with this clause 13.5, as a condition of engaging in any activity, or taking any other action, that would breach Target's obligations under clause 13.1 to 13.4 (or would breach its obligations under those clauses but for the operation of clause 13.7).

### **13.6 Matching right**

- (a) During the Exclusivity Period, Target must not (and must procure that each Target Director does not) recommend a Competing Proposal, or enter into any agreement, arrangement or understanding to undertake or facilitate a Competing Proposal, unless it has first:
  - (i) notified Bidder in writing of the material terms of the Competing Proposal and, subject to their consenting to their identity being disclosed, the person or persons proposing the Competing Proposal; and

- (ii) given Bidder at least 48 hours after provision of that information in which to provide a matching or superior deal to the relevant Competing Proposal (**Bidder Counter Proposal**); and
- (b) Target must use its reasonable endeavours to procure that the Target Directors consider any Bidder Counter Proposal in good faith and, if the Target Directors determine that the terms and conditions of the Bidder Counter Proposal, taken as a whole, are no less favourable than those of the relevant Competing Proposal, Target and Bidder must each use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable and Target must use its reasonable endeavours to procure that each Target Director makes a public statement to the Target Shareholders recommending the Bidder Counter Proposal to the Target Shareholders (subject to qualifications consistent with those provided in clause 5.6(a) of this agreement).

### 13.7 Exceptions

Nothing in this clause 13 prevents Target or its Representatives from:

- (a) continuing any discussions currently taking place in relation to the acquisition by Target of an interest in the leases under the Welhausen Participation Agreement;
- (b) providing information to its Representatives or credit agencies;
- (c) providing information to its auditors, customers or suppliers acting in that capacity, in the ordinary and usual course of business;
- (d) providing information required to be provided by any Regulatory Authority, a Court or law (including to satisfy its obligations of disclosure in accordance with the Listing Rules);
- (e) providing information to any Target Shareholder in accordance with practices as existed between Target and that Target Shareholder prior to the date of this agreement; or
- (f) making presentations to brokers, portfolio investors and analysts in the ordinary and usual course of business.

### 13.8 Acknowledgements and undertaking

Bidder has required Target to agree to the obligations set out in this clause 13 in consideration of Bidder proceeding with the Scheme and incurring significant costs in doing so. In the absence of obtaining these obligations, Bidder would not have entered into this agreement.

## 14. GST and US indirect tax

### 14.1 Interpretation

In this clause, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

### 14.2 GST exclusive

- (a) Any consideration or amount payable under this agreement, including any non-monetary consideration (as reduced in accordance with clause 14.2(e) if required) (**Consideration**) is exclusive of GST and any federal, state or local property, license, privilege, sales, service, use, excise, value-added, gross receipts or other like taxes imposed, assessed or collected by any authority wherever located which may now or hereafter be applicable to,

measured by or imposed upon or with respect to this agreement in the United States of America (such US taxes are referred to as the **Transaction and Supply Taxes**).

- (b) If GST or Transaction and Supply Tax is or becomes payable on a Supply made under or in connection with this agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST or Transaction and Supply Tax payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law or other relevant legislation.
- (c) The additional amount payable under clause 14.2(b) is payable at the same time and in the same manner as the consideration for the supply, subject to the provision of a valid Tax Invoice at or before that time in respect of any GST. If a valid Tax Invoice is not provided at or before that time then the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 14.2(b):
  - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this agreement:
  - (i) if an amount payable under or in connection with this agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
  - (ii) no Additional Amount is payable under clause 14.2(b) in respect of a Supply to which section 84-5 of the GST Act applies.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party and to which the Representative Member of a GST Group of which the party is a member is entitled.

## 15. Notices

### 15.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing and in English directed to the recipient's address for notices specified in the Details, as varied by any Notice; and
- (b) hand delivered or sent by prepaid post or facsimile or electronic form (such as email) to that address.

### 15.2 Effective on receipt

A Notice given in accordance with clause 15.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice;
- (d) if sent in electronic form, when the sender receives confirmation on its server that the message has been transmitted,

but if the delivery or transmission under clause 15.2(a), 15.2(c) or 15.2(d) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt, transmission or confirmation.

## 16. General

### 16.1 Alterations

This agreement may be altered only in writing signed by each party.

### 16.2 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

### 16.3 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of the other party.

### 16.4 Entire agreement

- (a) This agreement supersedes any prior agreements and understandings between the parties concerning the subject matter of this agreement.
- (b) The parties agree that on the date of this agreement the Memorandum of Understanding dated 10 October 2012, as amended and extended, is terminated. Termination of this agreement does not affect any accrued rights or remedies of a party.
- (c) Despite clause 16.4(a), the confidentiality agreement between Target and Bidder dated 16 July 2012 continues to apply in accordance with its terms.

## **16.5 Survival and indemnities**

- (a) Any indemnity or obligation of confidentiality under in this agreement is independent and survives termination of this agreement. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

## **16.6 Costs and stamp duty**

- (a) Except as otherwise provided in this agreement, each party must pay its own costs of negotiating, preparing, executing and performing this agreement and the Scheme Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.
- (b) Any stamp duty payable in respect of the Scheme must be paid by Bidder.

## **16.7 Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

## **16.8 No merger**

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

## **16.9 Severability**

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or part of a term of this agreement continue in force.

## **16.10 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **16.11 Relationship**

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

## **16.12 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 16.12(a) and 16.12(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

## **16.13 Governing law and jurisdiction**

This agreement is governed by the laws of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland.

#### **16.14 Specific performance**

The parties acknowledge that monetary damages alone would not be adequate compensation for a breach by any party of an obligation under this agreement and that specific performance of that obligation is an appropriate remedy.

#### **16.15 Mutual further assurances**

Each party must do all things necessary or expedient to be done by it in connection with the matters referred to in this agreement.