

## **ASX / MEDIA RELEASE**

# **M2 Telecommunications announces plans to acquire Orion Telecommunications**

## **Orion Board recommends shareholders approve the acquisition**

**Friday, 29 June 2007;** Orion Telecommunications Limited (ASX: OTL) and M2 Telecommunications Group Limited (ASX: MTU) today announced they have reached agreement for M2 to acquire Orion Telecommunications (excluding Orion's Irish and UK operations) by way of a scheme of arrangement.

**Under the scheme, Orion shareholders will receive:**

- **0.238 M2 shares for every 1 Orion share;**
- **6.55 cents per share in cash; and**
- **any excess cash based upon the net cash position of Orion**

The scheme, recommended for shareholder approval by the Board of Orion, will see Orion shareholders receiving a combination of cash and M2 shares that will position them to benefit from the growth of the combined entity.

The proposal values Orion at a minimum of 22.9 cents per share (based on M2's closing price on 28 June 2007 of 68.5 cents per share), excluding a further potential cash payment to Orion shareholders based on the net cash position of Orion (including any proceeds from the sale of the Irish and UK operations) prior to the Scheme being effective (see definition of "Net Proceeds" in Appendix 1). This represents a minimum premium of approximately 31% over Orion's current share price of 17.5 cents per share (closing price 28 June 2007) and the 1 month volume weighted average price (VWAP) to 28 June 2007.

Any excess cash that becomes available will be distributed to Orion shareholders as additional consideration to the cash component of the M2 offer.

Commenting on the proposed acquisition, Vaughan Bowen, Managing Director / CEO of M2, said: "We are very pleased to have reached an agreement to acquire Orion Telecommunications.

"Orion's Australian operations are highly complementary to M2's business. We see significant opportunities to add further value to Orion's customer base and enhance our management capability. Orion has proven its management and back office capabilities over 12 years of continuous operation and M2 welcomes the addition of Orion's management skills and call centre processes.

The benefits of the acquisition to M2's shareholders are considerable. We expect the acquisition will increase M2's annualised revenue by in excess of \$30 million to a consolidated level of between \$95 million and \$100 million and, most importantly, increase M2's earnings per share by upwards of 40%," said Mr Bowen.

Amanda Lacaze, Executive Chairman, Orion Telecommunications, said: "The Board is delighted to have come to an agreement with M2 Telecommunications, a company that is ideally positioned to unlock the true value of Orion's assets in Australia.

"This agreement is a win-win for shareholders of both Orion and M2 as the combined company will have the scale and resources to be a truly competitive player in the Australian telecommunications market. We are very pleased Orion shareholders will have the opportunity to share the up-lift of the combined business through the scrip component of M2's offer.

"The Board has previously stated its intention to participate in market consolidation in the Australian and Irish markets and negotiations are proceeding toward the sale of Orion's Irish and UK operations. We expect to announce a transaction in the near future," Ms Lacaze added.

### **Orion Board Recommendation**

- **The Directors of Orion unanimously recommend that Orion shareholders vote in favour of the scheme** in the absence of a superior proposal and subject to the Independent Expert concluding that the proposal is in the best interests of Orion shareholders.

- The Board has appointed an Independent Expert to consider the transaction and the Independent Expert's report will be distributed to all shareholders as part of the Scheme Booklet.

### **Benefits to Orion Shareholders**

The proposed transaction provides a number of benefits to Orion shareholders including:

- M2 is offering a significant premium for Orion shareholders, even when the Net Proceeds are excluded.
- Sizable MTU share ("scrip") component of the M2 offer is expected to provide Orion shareholders with a considerable uplift in value based upon M2's expected earnings per share accretion from the transaction.
- M2 has a history of strong earnings and dividend payments to its shareholders. By receiving M2 scrip as part of this offer, Orion shareholders will be well positioned to benefit from M2's proven track record of growth and shareholder returns.

### **Benefits to M2 Shareholders**

The proposed transaction provides a number of benefits to M2's shareholders including:

- Significant earnings per share up-lift. Based on pro-forma earnings for the year ending 30 June 2007, the transaction is expected to be more than 40% earnings per share accretive.
- The transaction significantly increases the scale of the M2 group, with consolidated revenues approaching \$100 million, accompanied by an expected strong growth in earnings.
- Orion's Southern Cross Telco business (Australian operation) has a proven track record of strong financial performance and cash flow generation as well as a stable and loyal customer base of small business and regional customers.

### **Merger Implementation Agreement**

Orion and M2 have entered into a Merger Implementation Agreement under which M2 has agreed to acquire Orion by way of scheme of arrangement. Implementation of the acquisition is

conditional on the satisfaction of a number of conditions precedent. The conditions and key terms included in the Merger Implementation Agreement are attached in Appendix 1.

### Anticipated Timing

The scheme of arrangement is expected to be completed by the end of September 2007. It is anticipated the Scheme Booklet will be dispatched to Orion shareholders in August 2007.

### Investor Briefing

Orion will host an investor briefing for its shareholders today at 11.30am (EST). M2's CEO Vaughan Bowen will join Orion's Executive Chairman Amanda Lacaze at this briefing.

Call-in details are as follows:

Australia: 1800 505 444 or 02 8214 9100  
USA: 1 877 465 7975  
UK: 0800 028 5260  
NZ: 0800 443 482

Participant passcode: 585 7252

To participate in the Conference, you will need a touchtone phone.

- Approximately **5 minutes** before the scheduled time, please dial your Call-in number.
- You will be asked to enter the participant passcode (**585 7252**) followed by the # sign.
- You will then be asked your name followed by the # sign.
- The conference will be activated by Orion at **11.25am (EST)**. You will be asked to introduce yourself to the conference.
- There will be an opportunity to ask questions following the briefing by Amanda Lacaze.
- If you are disconnected for any reason during the conference, redial your call-in number and re-enter the participant passcode.

-ENDS-

**For further information please contact:**

Amanda Lacaze, Executive Chairman, Orion Telecommunications: 0407 248 627

Vaughan Bowen, Managing Director, M2 Telecommunications: 03 9674 6555

**About M2 Telecommunications Group Limited**

M2 Telecommunications Group Limited (ASX:MTU) is a network independent provider of fixed line, mobile and data telecommunications services Australia wide and in New Zealand.

Under its M2 Telecom brand, M2 offers a suite of unique bundled telecommunications services and value added offerings targeted principally at the small enterprise market which are distributed through an exclusive trans-Tasman network of sales dealerships and agencies.

In addition to its established small enterprise business unit M2 established a wholesale business in mid 2006, named M2 Wholesale, following its appointment as by Optus as the exclusively endorsed aggregator/enabler of Optus (post-paid) mobile services to other telecommunications service providers, ISP's and aspiring mobile virtual network operators (MVNO's). As a further boost to its wholesale operations, in May 2007 M2 completed the purchase of Australia's largest independent data wholesaling business, Wholesale Communications Group Pty Ltd ("WCG").

M2 has demonstrated strong growth in both revenue and "bottom line" profit year-on-year for each of the last 5 years and was named by BRW as one of Australia's fastest growing companies in 2003, 2004, 2005 and 2006 and on the Deloitte Technology Fast 50 in 2004 and again in 2005.

M2's balance sheet is free of debt and boasts solid cash reserves. The Company has an established dividend policy, with high yield franked dividends being paid over the last 3 years.

For more about M2 visit [www.m2.com.au](http://www.m2.com.au)

**About Orion Telecommunications Limited**

Orion Telecommunications Limited (Orion) (ASX:OTL) is a switchless reseller of fixed line, mobile and data products to residential and small business customers with operations in Australia under the Southern Cross Telco brand, and in Ireland and the United Kingdom under the brand NewTel Communications. On 13 June 2007, Orion announced that it intends to sell its Ireland and UK operations.



Southern Cross Telco is Orion's largest subsidiary and currently employs approximately 60 people based in Hobart, Tasmania. The business resells a full suite of telecommunications services to over 25,000 customers across Australia-wide.

For more about Orion visit [www.oriontelecommunications.com.au](http://www.oriontelecommunications.com.au)

# Appendix 1

## Key terms of Merger Implementation Agreement

### Introduction

---

Orion Telecommunications Limited (**Orion**) and M2 Telecommunications Group Ltd (**M2**) entered into a Merger Implementation Agreement (**MIA**) on 28 June 2007. The MIA sets out the terms and the parties' respective obligations in connection with the implementation of the Scheme.

A copy of the MIA will be contained in the Scheme Booklet to be provided by Orion to Orion Shareholders prior to the Scheme Meeting. An outline of the key terms of the MIA is set out below.

### Conditions precedent

---

The Scheme will not become Effective unless each of the following conditions precedent is satisfied or waived:

- (a) **Regulatory Approvals:**
  - (a) ASIC and ASX issue or provide any consents or approvals or do other acts necessary or desirable to implement the Scheme; and
  - (b) the ACCC takes no action to oppose the Transaction, before 5.00pm on the day before the Second Court Date.
- (b) **Orion Shareholder approval:** Orion Shareholders approve the Scheme at the Scheme Meeting (or any adjournment or postponement of it at which the Scheme is voted on) by the requisite majorities under the Corporations Act.
- (c) **Quotation of M2 Shares:** The M2 Shares to be issued pursuant to the Scheme are approved for official quotation by ASX by 8.00 am on the Second Court Date (any such approval may be subject to customary conditions and to the Scheme becoming Effective).
- (d) **Court approval:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that are customary or usual.
- (e) **Restraints:** No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the Transaction is in effect at 5.00pm on the day before the Second Court Date.
- (f) **M2 Material Adverse Change:** No M2 Material Adverse Change is in existence at 5.00pm on the day before the Second Court Date.

- (g) **Orion Material Adverse Change:** No Orion Material Adverse Change is in existence at 5.00pm on the day before the Second Court Date.
- (h) **M2 Prescribed Occurrence:** No M2 Prescribed Occurrence has occurred as at 5.00pm on the day before the Scheme Meeting and at 5.00pm on the day before the Second Court Date.
- (i) **Orion Prescribed Occurrence:** No Orion Prescribed Occurrence has occurred as at 5.00pm on the day before the Scheme Meeting and at 5.00pm on the day before the Second Court Date.
- (j) **M2 representations:** No representation given by M2 has become materially incorrect before 5.00pm on the day before the Second Court Date.
- (k) **Orion representations:** No representation given by Orion has become materially incorrect before 5.00pm on the day before the Second Court Date.
- (l) **Independent Expert:** The Independent Expert giving a report to Orion that in its opinion the Scheme is in the best interests of Orion Shareholders and the Independent Expert does not change its conclusion or withdraw its report prior to 5.00pm on the day prior to the Second Court Date.
- (m) **No change of Board recommendation:** Between 28 June 2006 and the date that Orion Shareholders vote on the Scheme at the Scheme Meeting, no one or more of the Directors of Orion changes or withdraws their unanimous recommendation to Orion Shareholders to vote in favour of the Scheme and all resolutions incidental to the Scheme.
- (n) **Completion of NewTel Disposals:** The NewTel Disposals are completed and the NewTel Disposal Proceeds are received by Orion before 5.00pm on the day before the Second Court Date
- (o) **Material Contract Consent:** the parties to the Material Contracts consent to the change of control of Orion and provide any other consent or approval required in accordance with the Material Contracts.

## Scheme

---

Orion must propose the Scheme under which all of the Scheme Shares will be transferred to M2 (or a nominee of M2) and the Orion Shareholders will be entitled to receive the Scheme Consideration.

The M2 Shares to be issued by M2 as part of the Scheme Consideration will rank equally with all existing M2 Shares then on issue (other than in respect of any dividend for the period 1 January 2007 to 30 June 2007 of not more than two (2) cents per M2 Share already declared and not yet paid by M2, regardless of whether the record date for entitlement to that dividend is after the Implementation Date) and will be issued free from all encumbrances.

## Board and management changes

---

Orion must, as soon as practicable:

- (p) after the Second Court Date, take all actions necessary to cause the appointment of that number of nominees of M2 to the Orion Board which gives those nominees acting together control of the Orion Board; and
- (q) after the Scheme Consideration has been paid, ensure that all directors on the Orion Board, other than the M2 nominees, resign.

## Exclusivity

---

During the Exclusivity Period, Orion and M2 must not, and must use their best endeavours to ensure that their Representatives do not, except with the prior consent of the other party:

- (a) solicit, initiate or invite any enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Third Party Proposal for that party;
- (b) participate in any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Third Party Proposal for that party; or
- (c) communicate to any person an intention to do any of the things referred to in (a) or (b).

Each of Orion and M2 have also agreed that they will notify the other of any unsolicited approach to them or their Representatives that relates to a Third Party Proposal (including the identity of the third party and terms of the proposal) (**Notification Obligation**). Each party must give at least 48 hours notice before recommending a Third Party Proposal.

The obligations in paragraphs (b) and (c) and the Notification Obligation are subject to fiduciary carve-outs.

## Payment of costs

---

Orion must pay to M2 the Break Fee to compensate M2 for the costs and disbursements incurred by M2 and the time invested by the management and board of M2 if the MIA is terminated or the Scheme is not implemented as a result of:

- (a) the non-satisfaction of certain conditions precedent (Orion Material Adverse Change, Orion Prescribed Occurrence, Orion representations, NewTel Disposals) provided that, immediately before the termination or, if the MIA has not been terminated when Court approval was due to be sought, no matter has occurred which would prevent certain conditions precedent (Regulatory Approvals, Quotation of M2 Shares, restraints, M2 Material Adverse Change, M2 Prescribed Occurrences, M2 representations, Independent Expert) from being satisfied; or
- (b) Orion not using its best endeavours to cause certain conditions precedent (Orion Shareholder approval and Court approval) to be satisfied, provided that all other conditions precedent have been or are reasonably likely to be satisfied; or

- (c) any Orion Board member withdrawing or changing their recommendation in relation to the Scheme or supporting a Third Party Proposal for Orion; or
- (d) Orion breaching its exclusivity obligations.

M2 must pay to Orion the Break Fee to compensate Orion for the costs and disbursements incurred by Orion and the time invested by the management and board of Orion if the MIA is terminated or the Scheme is not implemented as a result of:

- (a) the non-satisfaction of certain conditions precedent (Quotation of M2 Shares, M2 Material Adverse Change, M2 Prescribed Occurrence, M2 representations) provided that, immediately before the termination or, if the MIA has not been terminated when Court approval was due to be sought, no matter has occurred which would prevent certain conditions precedent (Regulatory Approvals, restraints, Orion Material Adverse Change, Orion Prescribed Occurrence, Orion representations) from being satisfied; or
- (b) the person making the Third Party Proposal for M2, which proposal resulted in termination of the MIA, acquiring voting power of 50% or more in M2; or
- (c) M2 breaches its exclusivity obligations.

Neither party is obliged to pay a break fee if:

- (a) a Court or Government Agency has taken any action permanently restraining or otherwise prohibiting the Transaction, or has refused to do any thing necessary to permit the Transaction, and the action or refusal has become final and cannot be appealed; or
- (b) the Independent Expert determines in its report that the Scheme is not in the best interests of the Orion Shareholders, unless such determination is as a result of a Third Party Proposal for Orion.

## Termination

---

- (a) Either party may terminate the MIA by written notice to the other party at any time before 5.00pm on the day before the Second Court Date if:
  - (i) the other party is in material breach of any provision of the MIA, the party wishing to terminate has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate, and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) from the time the notice is given;
  - (ii) a Court or Government Agency has taken any action permanently restraining or otherwise prohibiting the Transaction, or has refused to do any thing necessary to permit the Transaction, and the action or refusal has become final and cannot be appealed; or
  - (iii) the other party breaches its exclusivity obligations.
- (b) M2 may terminate the MIA by written notice to Orion if:
  - (i) 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 majority of Orion Shareholders required under the Corporations Act; or
  - (ii) any Orion Board member withdraws or changes their recommendation in relation to the Scheme for any reason or supports a Third Party Proposal for Orion.

- (c) Orion may terminate the MIA by written notice to M2 if after Orion has received notice (pursuant to the MIA) of a Third Party Proposal for M2, the Orion Board has determined in good faith and acting reasonably that if the Third Party Proposal for M2 that has the support of the majority of members of the M2 Board is implemented the Transaction would not be in the best interests of, or fair and reasonable to, Orion Shareholders.

## Relevant Definitions

---

- (a) **ACCC** means the Australian Competition and Consumer Commission;
- (b) **ASIC** means the Australian Securities and Investments Commission;
- (c) **ASX** means the ASX Limited (ACN 008 624 691) or, as the context requires, the financial market operated by it;
- (d) **Break Fee** means:
- (i) in the case of the Break Fee that may become payable by Orion to M2 in accordance with the MIA, an amount equal to all third party expenses incurred by M2 directly in connection with the Scheme (including but not limited to expenses incurred by M2 prior to the date of the MIA) up until the time that M2 becomes entitled to make a claim for the Break Fee under the MIA, up to a maximum amount of \$300,000; and
  - (ii) in the case of the Break Fee that may become payable by M2 to Orion in accordance with the MIA, an amount equal to all third party expenses incurred by Orion directly in connection with the Scheme (including but not limited to expenses incurred by Orion prior to the date of the MIA) up until the time that Orion becomes entitled to make a claim for the Break Fee under the MIA, up to a maximum amount of \$300,000;
- (e) **Business Day** has the meaning given in the Listing Rules;
- (f) **Cash Consideration** means \$5,000,000 (being 6.55 cents per Orion Share);
- (g) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (h) **Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act agreed in writing by M2 and Orion;
- (i) **Effective** means when used in relation to a Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme;
- (j) **End Date** means 31 October 2007;
- (k) **Excluded Shares** means any Orion Shares held by M2 or its Related Bodies Corporate;
- (l) **Exclusivity Period** means the period from and including the date of the MIA to the earlier of:
- (i) the termination of the MIA in accordance with its terms; and
  - (ii) the End Date;
- (m) **Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state;

- (n) **Implementation Date** means the third Business Day after the Transaction Record Date;
- (o) **Independent Expert** means the independent expert in respect of the Scheme appointed by Orion;
- (p) **ITSM Litigation** means the Supreme Court of Victoria proceedings issued by I.T. System Management Pty Ltd against M2 Telecommunications Pty Ltd;
- (q) **Listing Rules** means the official listing rules of the ASX;
- (r) **Material Contracts** means the following contracts to which either Orion or a subsidiary of Orion is a party:
  - (i) the Telstra customer relationship agreement dated 30 May 2002 (as varied 14 January 2005 and 24 October 2006);
  - (ii) the Telstra customer relationship agreement 85 GSM - 8483186...1 dated 20 March 2006;
  - (iii) the Optus SCT wholesale general terms dated 22 March 2007; and
  - (iv) the Optus SCT post paid mobile service description dated 22 March 2007;
- (s) **Material Proceedings** means investigation, prosecution or litigation, which is not withdrawn or discontinued within 14 days of proceedings being filed, involving a claim in excess of \$250,000 but in the case of M2, does not include the ITSM Litigation;
- (t) **Material Subsidiary** means an operating subsidiary of Orion or M2, as applicable, that conducts business or has assets of more than \$250,000;
- (u) **M2 Board** means the board of directors of M2;
- (v) **M2 Material Adverse Change** means matters, events or circumstances other than:
  - (i) those required to be done or procured by M2 pursuant to the MIA;
  - (ii) those which Orion and M2 agree in writing are not a M2 Material Adverse Change; or
  - (iii) those fairly disclosed by M2 to Orion in writing prior to the date of the MIA,
 which would have a material adverse change on M2 taken as a whole that would cause a reasonable person in the position of Orion not to proceed with the Scheme on the terms and subject to the conditions of the MIA;
- (w) **M2 Prescribed Occurrence** (other than as required by the MIA or the Scheme) means the occurrence of any of the following without the consent in writing of Orion (such consent not to be unreasonably withheld), between the date of the MIA and 5.00pm on the day before the Second Court Date:
  - (i) M2 converting all or any of its shares into a larger or smaller number of shares;
  - (ii) M2 or a Material Subsidiary of M2 resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
  - (iii) M2 or a Material Subsidiary of M2:
    - (A) entering into a buy-back agreement; or
    - (B) resolving to approve the terms of a buy-back agreement under the Corporations Act;
  - (iv) M2 declaring, paying or distributing any dividend, bonus or other share of its profits or assets, excluding the dividend that M2 may

declare for the period 1 January 2007 to 30 June 2007 of not more than two (2) cents per M2 Share in accordance with its stated dividend policy after the date of the MIA but before the Second Court Date and to be paid after the Implementation Date;

- (v) M2 or a subsidiary of M2 issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than pursuant to M2's existing dividend reinvestment plan;
  - (vi) M2 or a subsidiary of M2 issuing or agreeing to issue, securities convertible into shares or debt securities;
  - (vii) M2 or a subsidiary of M2 making any change to its constitution;
  - (viii) M2 or a subsidiary of M2:
    - (A) acquiring or disposing of;
    - (B) agreeing to acquire or dispose of; or
    - (C) offering, proposing, announcing a bid or tendering for, any business, assets, entity or undertaking, the value of which exceeds \$100,000, or that otherwise constitutes a M2 Material Adverse Change;
  - (ix) M2 or a subsidiary of M2 being notified of Material Proceedings against M2 or a subsidiary of M2;
  - (x) M2 or a Material Subsidiary of M2 creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property otherwise than:
    - (A) in the ordinary course of business; and
    - (B) a lien or other encumbrance which arises by operation of law or legislation securing an obligation that is not yet due;
  - (xi) M2 or a Material Subsidiary of M2 resolving that it be wound up;
  - (xii) a liquidator or provisional liquidator of M2 or of a Material Subsidiary of M2 being appointed;
  - (xiii) the Court making an order for the winding up of M2 or of a Material Subsidiary of M2;
  - (xiv) an administrator of M2 or of a Material Subsidiary of M2 being appointed under the Corporations Act;
  - (xv) M2 or a Material Subsidiary of M2 being deregistered as a company or otherwise dissolved;
  - (xvi) M2 or a Material Subsidiary of M2 executing a deed of company arrangement; or
  - (xvii) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of M2 or of a Material Subsidiary of M2;
- (x) **M2 Shares** means fully paid ordinary shares of M2;
- (y) **Net Proceeds** means:
  - (i) the Orion Cash at Bank plus the NewTel Disposal Proceeds plus the Telstra Amount less the Working Capital Adjustment, less the Tax Provision, less the Transaction Costs and less \$5,000,000; or
  - (ii) if the calculation above results in a negative number, nil;
- (z) **NewTel Disposal Proceeds** means the net proceeds payable to Orion from the NewTel Disposals;

- (aa) **NewTel Disposals** means the sale, assignment and/or transfer of NewTel Ireland and NewTel UK;
- (bb) **NewTel Ireland** means NewTel Communications Limited, a company incorporated in Ireland (company number 303535);
- (cc) **NewTel UK** means NewTel Communications Limited, a company incorporated in the United Kingdom (company number 04698478);
- (dd) **Orion Board** means the board of directors of Orion;
- (ee) **Orion Cash at Bank** means the aggregate of all amounts in the bank accounts of Orion or any subsidiary of Orion as at 5.00pm on the day before the Second Court Date but excluding any amounts attributable to the NewTel Disposal Proceeds and the Telstra Amount;
- (ff) **Orion Material Adverse Change** means matters, events or circumstances other than:
  - (i) those required to be done or procured by Orion pursuant to the MIA;
  - (ii) those which Orion and M2 agree in writing are not an Orion Material Adverse Change; or
  - (iii) those fairly disclosed by Orion to M2 in writing prior to the date of the MIA,

which would have a material adverse change on Orion taken as a whole that would cause a reasonable person in the position of M2 not to proceed with the Scheme on the terms and subject to the conditions of the MIA;
- (gg) **Orion Prescribed Occurrence** (other than the NewTel Disposals or as required by the MIA or the Scheme) means the occurrence of any of the following without the consent in writing of M2 (such consent not to be unreasonably withheld), between the date of the MIA and 5.00pm on the day before the Second Court Date:
  - (i) Orion converting all or any of its shares into a larger or smaller number of shares;
  - (ii) Orion or a Material Subsidiary of Orion resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
  - (iii) Orion or a Material Subsidiary of Orion:
    - (A) entering into a buy-back agreement; or
    - (B) resolving to approve the terms of a buy-back agreement under the Corporations Act;
  - (iv) Orion declaring, paying or distributing any dividend, bonus or other share of its profits or assets;
  - (v) Orion or a subsidiary of Orion issuing shares (other than pursuant to the exercise of existing options), or granting an option over its shares, or agreeing to make such an issue or grant such an option;
  - (vi) Orion or a subsidiary of Orion issuing or agreeing to issue, securities convertible into shares or debt securities;
  - (vii) Orion or a subsidiary of Orion making any change to its constitution;
  - (viii) Orion or a subsidiary of Orion:
    - (A) acquiring or disposing of;
    - (B) agreeing to acquire or dispose of; or
    - (C) offering, proposing, announcing a bid or tendering for,

any business, assets, entity or undertaking, the value of which exceeds \$100,000, or that otherwise constitutes an Orion Material Adverse Change, other than in relation to the NewTel Disposals;

- (ix) Orion or a subsidiary of Orion being notified of Material Proceedings against Orion or a subsidiary of Orion;
  - (x) Orion or a Material Subsidiary of Orion creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property otherwise than:
    - (A) in the ordinary course of business; and
    - (B) a lien or other encumbrance which arises by operation of law or legislation securing an obligation that is not yet due;
  - (xi) Orion or a Material Subsidiary of Orion resolving that it be wound up;
  - (xii) a liquidator or provisional liquidator of Orion or of a Material Subsidiary of Orion being appointed;
  - (xiii) the Court making an order for the winding up of Orion or of a Material Subsidiary of Orion;
  - (xiv) an administrator of Orion or of a Material Subsidiary of Orion being appointed under the Corporations Act;
  - (xv) Orion or a Material Subsidiary of Orion being deregistered as a company or otherwise dissolved;
  - (xvi) Orion or a Material Subsidiary of Orion executing a deed of company arrangement; or
  - (xvii) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of Orion or of a Material Subsidiary of Orion;
- (hh) **Orion Shareholders** means each person who is registered as the holder of Orion Shares;
- (ii) **Orion Shares** means fully paid ordinary shares of Orion;
- (jj) **Regulatory Approvals** has the meaning given to that term in the condition precedent clause;
- (kk) **Related Body Corporate** has the meaning given in section 50 of the Corporations Act;
- (ll) **Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act;
- (mm) **Representative** means in relation to a party:
  - (i) each of the party's subsidiaries; and
  - (ii) each of the directors, officers, employees and advisers of the party or of any of its subsidiaries;
- (nn) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Orion and Scheme Shareholders in respect of all the Orion Shares;
- (oo) **Scheme Booklet** means the information to be approved by the Court and despatched to Orion Shareholders and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, an independent expert's report, notice of meeting and proxy form in the form the parties agree;
- (pp) **Scheme Consideration** means the consideration to be provided to Orion Shareholders for the transfer of the Scheme Shares being the aggregate of:

- (i) the Scrip Consideration;
  - (ii) the Cash Consideration; and
  - (iii) the Net Proceeds,
- divided by the number of Orion Shares on issue;
- (qq) **Scheme Meeting** means the meeting of Orion Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act;
  - (rr) **Scheme Shareholders** means Orion Shareholders, other than holders of Excluded Shares, as at the Transaction Record Date;
  - (ss) **Scheme Shares** means the Orion Shares on issue at the Transaction Record Date;
  - (tt) **Scrip Consideration** means 18,158,686 M2 Shares (being 0.238 M2 Shares per Orion Share) subject to any rounding adjustments in accordance with the MIA;
  - (uu) **Second Court Date** means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme is heard;
  - (vv) **Tax Provision** means:
    - (i) Nil, in the event that the United States Internal Revenue Service audit and investigation in relation to NewTel Holdings LLC is finalised and complete prior to 5.00pm on the Second Court Date; or
    - (ii) \$250,000 in the event that the United States Internal Revenue Service audit and investigation in relation to NewTel Holdings LLC is not finalised and complete prior to 5.00pm on the Second Court Date;
  - (ww) **Telstra Amount** means:
    - (i) in the event that the Telstra Security is released prior to 5.00pm on the Second Court Date, the total Telstra Security; and
    - (ii) in the event that the Telstra Security is not released prior to 5.00pm on the Second Court Date, fifty per cent (50%) of the Telstra Security and for the avoidance of doubt, the Telstra Security will remain an asset of Orion;
  - (xx) **Telstra Security** means the \$950,000 security deposit held by Telstra as at the date of the MIA, which amount may vary prior to 5.00pm on the Second Court Date, which Orion and M2 will use their respective best endeavours to have released prior to 5.00pm on the Second Court Date;
  - (yy) **Third Party Proposal** means in relation to a party, any expression of interest, proposal or offer in relation to a bid, scheme, joint venture, dual listed company structure, purchase of a main undertaking, share issue or other similar reorganisation (other than the NewTel Disposals or as contemplated by the MIA) by any person under which:
    - (i) a person (together with the person's Associates) may acquire a Relevant Interest in more than 15% of one or more classes of securities of the party;
    - (ii) a person may acquire voting power (as defined in Chapter 6 of the Corporations Act) of more than 15% in the party;
    - (iii) a person may acquire, directly or indirectly any interest (including legal, equitable or economic) in all or a material part of the business or assets (on a consolidated basis) of the party; or
    - (iv) a person may otherwise merge or amalgamate with the party;

The acquisition of an interest in a part of the business or assets (on a consolidated basis) of a party will be material if the relevant business or businesses contribute 15% or more of the consolidated net profit after tax of the party; or the assets represent 15% or more of the total consolidated assets of the party;

- (zz) **Transaction** means the acquisition by M2 of all the Scheme Shares through implementation of the Scheme in accordance with the terms of the MIA;
- (aaa) **Transaction Costs** means all of the transaction costs incurred by Orion in relation to the Scheme, including all Orion advisory costs (including but not limited to corporate advisor retainers and success fees, independent expert report costs, accounting, tax and legal costs), termination payments to Orion Board and Chief Financial Officer (including any applicable relocation costs), the costs associated with delisting Orion from ASX, shareholder communications and all out-of-pocket expenses. For the avoidance of doubt, Orion is to be responsible for all costs associated with the Scheme save and except for costs directly incurred by M2;
- (bbb) **Transaction Record Date** means 5.00pm, 5 Business Days after the date on which the Scheme, if approved, becomes Effective; and
- (ccc) **Working Capital Adjustment** means the amount of \$280,000.