



28 September 2012

The Manager  
Australian Securities Exchange  
Company Announcements Officer  
Level 4, 20 Bridges Street  
Sydney NSW 2000

By electronic lodgment

Dear Sir / Madam

### **Scheme Implementation Agreement**

Unity Mining Limited (ASX:UML) ("Unity") and Cortona Resources Limited (ASX:CRC) ("Cortona") today announced that they have entered into a binding transaction agreement that will result in the creation of a growing Australian gold business through an all-scrip merger of equals between Unity and Cortona. The transaction Scheme Implementation Agreement that governs the proposed transaction is attached.

Yours faithfully

A handwritten signature in black ink, appearing to read "Andrew McIlwain".

Andrew McIlwain  
Managing Director & CEO  
Unity Mining Limited

A handwritten signature in black ink, appearing to read "Peter van der Borgh".

Peter van der Borgh  
Managing Director  
Cortona Resources Limited

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CHAMBERS  
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Melbourne  
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Perth

Execution Version  
**27 September 2012**

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Cortona Resources Limited

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Unity Mining Limited

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# Scheme Implementation Agreement

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**Date** 27 September 2012

## Parties

**Cortona Resources Limited** ACN 117 848 790 of Level 5, 72 Kings Park Road, West Perth, WA 6005 (**Cortona**)

**Unity Mining Limited** ACN 005 674 073 of Level 10, 350 Collins Street, Melbourne VIC 3000 (**Unity**)

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## Background

- A Cortona and Unity have agreed to merge the two companies by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
  - B At the request of Unity, Cortona intends to propose the Scheme to Cortona Shareholders and issue the Scheme Booklet.
  - C The parties have agreed to implement the Transaction in accordance with this document.
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## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this document:

**Accounting Standards** means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and content of accounts; and
- (b) generally accepted accounting principles, policies, practices and approved procedures in Australia.

**Advisers** means, in relation to an entity, its financiers, and any legal adviser, financial adviser, corporate adviser or other expert adviser or consultant who provides advisory services in a professional capacity to third parties and who has been engaged by that entity.

**Announcement** means the public announcement to be made by Cortona and Unity in an agreed form pursuant to **clause 10.2(a)**.

**Announcement Date** means:

- (a) the date on which this document is executed; or
- (b) if this document is executed on a day which is not a Trading Day, the first Trading Day immediately following the day of execution.

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

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

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

**Break Fee** means \$220,000 (exclusive of GST).

**Business Day** means a day that is each of the following:

- (a) a Business Day within meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Perth, Western Australia and Melbourne, Victoria.

**Claim** means a demand, claim, action, or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

**Communications** means all forms of communications, whether written, oral, in electronic format or otherwise, and whether direct or indirect via agents or Representatives.

**Competing Proposal** means any expression of interest, proposal, offer, pursuant to which a Third Party will, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) acquire (directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the assets or business of the Cortona Group;
- (b) acquire a relevant interest in, become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in 10% or more of all issued Cortona Shares;
- (c) acquire control of Cortona;
- (d) otherwise acquire or merge with Cortona; or
- (e) require a party to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the Cortona Group, or other synthetic merger or any other transaction or arrangement.

**Competing Proposal Notice** has the meaning given to it in **clause 8.5(a)**.

**Condition Precedent** means a condition precedent set out in out **schedule 1**.

**Confidentiality Agreement** means the confidentiality agreements dated 16 July 2012 and 25 July 2012 between Cortona and Unity.

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

**Corporations Regulations** means *Corporations Regulations 2001* (Cth).

**Cortona Board** means the board of directors of Cortona (as constituted from time to time).

**Cortona Director** means a director of Cortona.

**Cortona Disclosure Materials** means all written information in connection with the Transaction or relating to the Cortona Group's past, present or future operations, affairs, business and/or strategic plans, which has been provided to Unity or its Representatives prior to the date of this document or publicly announced prior to the date of this document.

**Cortona Group** means Cortona and each of its Related Entities.

**Cortona Information** means all information contained in the Scheme Booklet other than the Unity Information and the Independent Expert's report.

**Cortona Material Adverse Change** means a matter, event or circumstance that occurs, is announced or becomes known to Cortona (whether or not it becomes public) where that matter, event or circumstance has, has had, or could reasonably be expected to have, individually or when aggregated with all such matters, events or circumstances, the result that:

- (a) there is or would be reasonably likely to be a material adverse effect on the assets, liabilities, business, results, operations, trading or financial position or material licenses of the Cortona Group;
- (b) the Cortona Group is unable to carry on its business in substantially the same manner as carried on as at the date of this document, or which otherwise materially and adversely affects the prospects of the Cortona Group or the future development of the Dargues Reef project;
- (c) the total consolidated net assets of the Cortona Group as set out in the consolidated financial statements for the 12 month period ending 30 June 2012 are diminished by \$3 million or more; or
- (d) other than where consented to by Unity, any of the Cortona Material Permits are revoked, not renewed or otherwise cease to be held by the Cortona Group,

other than a matter, event or circumstance:

- (e) required to be done or procured by Cortona pursuant to this document or the Transaction;
- (f) which is, and to the extent that it is, fairly disclosed in the Cortona Disclosure Materials or otherwise known to Unity;



- (g) which relates to changes in business conditions affecting the Australian gold industry generally or the financing of projects generally in the Australian gold industry;
- (h) which relates to interest rates, commodity prices or currency exchange rates; or
- (i) which is, and to the extent that it is, a consequence of Losses covered by insurance which Cortona's insurers have agreed to pay.

**Cortona Material Permits** means mining lease 1675, exploration licence 6003, exploration licence 6462 and exploration licence 6548 held by the Cortona Group.

**Cortona Material Transaction** means, other than:

- (a) as expressly contemplated by this document or the Transaction;
- (b) to the extent that it is fairly disclosed in the Cortona Disclosure Materials; or
- (c) with the prior written consent of Unity,

the occurrence of any of the following:

- (d) Cortona or any of its subsidiaries issues, or agrees to issue, or grants an option to subscribe for, debentures, other than to a wholly-owned subsidiary of Cortona;
- (e) Cortona or any subsidiary of Cortona makes any change to its constitution or other constituent documents;
- (f) Cortona or any subsidiary of Cortona disposes, or agrees to dispose, of shares in a related body corporate of Cortona;
- (g) the Cortona Group changes in any material respect the nature of its business;
- (h) Cortona or any subsidiary of Cortona agrees to incur or incurs any financial indebtedness or issues any indebtedness or debt securities or varies any proposed financial indebtedness terms other than by way of extension or in the ordinary course of business;
- (i) Cortona or any subsidiary of Cortona makes any loans, advances or capital contributions to, or investments in, any other person, other than to or in Cortona or any wholly-owned subsidiary of Cortona or in the ordinary course of business;
- (j) Cortona or any subsidiary of Cortona:
  - (i) grants to any officer of Cortona or any subsidiary of Cortona any increase in severance or termination pay or superannuation entitlements; or
  - (ii) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any provisions of, any contract of employment with any senior executive of Cortona or of any subsidiary of Cortona;

- (k) Cortona or any of its material subsidiaries ceases, or threatens to cease, to carry on business;
- (l) Cortona or any of its material subsidiaries becomes subject to an Insolvency Event or is deregistered as a company or otherwise dissolved;
- (m) Cortona or any of its material subsidiaries disposes, or agrees to dispose, of any asset (including an exploration licence) other than where:
  - (i) the total amount involved in the relevant transactions in the period until the Second Court Date is less than \$200,000; or
  - (ii) the disposal relates to a Cortona Permit that is not a Cortona Material Permit,
- (n) Cortona or any of its material subsidiaries acquires, or agrees to acquire, any asset (including an exploration licence) other than:
  - (i) in the ordinary course of business; or
  - (ii) where the amount involved in the relevant transactions in the period until the Second Court Date is less than \$200,000 in total;
- (o) Cortona converting all or any of its shares into a larger or smaller number of shares;
- (p) any member of the Cortona Group resolving to reduce, or reducing, its share capital in any way, or reclassifying, redeeming, combining, splitting or repurchasing directly or indirectly any of its shares;
- (q) any member of the Cortona Group resolving to buy back, or buying back, any of its shares, including by:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (r) any member of the Cortona Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than:
  - (i) to a wholly-owned subsidiary of Cortona;
  - (ii) an issue of Cortona Shares following the valid exercise of any Options on issue as at the date of this document;
- (s) any member of the Cortona Group issuing, or agreeing to issue, securities convertible into shares or debt securities (including any performance rights or options);
- (t) any member of the Cortona Group making, in aggregate, capital expenditure in excess of \$200,000;
- (u) any member of the Cortona Group:
  - (i) acquiring, leasing or disposing of;

- (ii) agreeing to acquire, lease or dispose of; or
  - (iii) offering, proposing or announcing a bid or tenders for, any material business, assets (other than trading inventories and consumables in the ordinary and usual course of business) or entity with a value greater than \$200,000 in total in the period until the Second Court Date, or enters into joint venture, partnership or similar arrangement;
- (v) other than in the ordinary course of business, any member of the Cortona Group:
  - (i) entering into any contracts or commitments either individually or collectively involving revenue or expenditure of more than \$200,000 over the term of the contract or commitment;
  - (ii) terminating or amending in a material manner any contracts of the Cortona Group's business which either individually or collectively involve expenditure or revenue of more than \$200,000 over the term of the contract;
  - (iii) paying, discharging or satisfying any claims, liabilities or obligations under any contracts or commitments (including land access or native title claims) involving revenue or expenditure of more than \$200,000 other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or
  - (iv) waiving any material claims or rights under, or waiving the benefit of any provision of, any contracts or commitments involving revenue or expenditure of more than \$200,000, other than contracts or commitments associated with the implementation of the Transaction;
- (w) except as expressly provided in an existing employment contract in place as at the date of this document, any member of the Cortona Group:
  - (i) paying any bonus to, or increasing the compensation of, any officer of any member of the Cortona Group;
  - (ii) accelerating the rights of any officer of any member of the Cortona Group to compensation or benefits of any kind (including under any Cortona executive or employee share plan);
  - (iii) granting to any officer of any member of the Cortona Group any increase in severance or termination pay or superannuation entitlements or by issuing any Cortona Shares or securities convertible to Cortona Shares to any of those persons; or
  - (iv) establishing, adopting, entering into or amending in any material respect (including by taking any action to accelerate any rights or benefits due under) any enterprise bargaining agreement,

Australian workplace agreement, employee benefit plan or superannuation scheme of Cortona or relating to the officers or employees of any member of the Cortona Group;

- (x) any member of the Cortona Group making any change in its accounting methods, principles or practices which would materially affect the reported consolidated assets, liabilities or results of operations of any member of the Cortona Group, other than as required to comply with any changes to generally accepted accounting principles, standards, guidelines or practices in the jurisdiction of the relevant entity's incorporation;
- (y) Cortona or any subsidiary of Cortona create, or agree to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the ordinary course of business; or
- (z) other than where consented to by Unity, any member of the Cortona Group disposing of, relinquishing or surrendering all or any part of any of the Cortona Material Permits or any interest in the Cortona Material Permits.

**Cortona Permits** means exploration licences 6880, 6003, 6010, 6012, 6445, 6462, 6548 and mining lease 1675 held by the Cortona Group.

**Cortona Share** means a fully paid ordinary share in the capital of Cortona.

**Cortona Shareholder** means each person who is registered in the Register as the holder of Cortona Shares.

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act agreed in writing by the parties.

**Deed Poll** means a deed poll in the form of **annexure B** to be executed by Unity in favour of the Scheme Participants, under which Unity covenants in favour of each Scheme Participant to perform its obligations under the Scheme and this document in relation to the implementation of the Scheme.

**Disclosure** has the meaning given in **clause 10.2(c)**.

**Effective** means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Scheme Order, but not before an office copy of the Scheme Order is lodged with ASIC.

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

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest (including any "security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth)), title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

**End Date** means the date that is 6 months after the date of this document or such later date as Cortona and Unity agree in writing.

**Exclusivity Period** means the period commencing on the date of this document and ending on the earlier of:

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

**First Court Date** means the first day on which the application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, Australian Tax Office, ASX, the Foreign Investment Review Board and any regulatory organisation established under statute or any stock exchange.

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

**Implementation Date** means the fifth Business Day following the Record Date, or such other date as ordered by the Court or agreed between Cortona and Unity.

**Independent Expert** means the independent expert appointed in respect of the Scheme by Cortona.

**Ineligible Foreign Shareholder** means a Scheme Participant whose registered address (as shown in the Register as at the Record Date) is in a jurisdiction other than Australia and its external territories or New Zealand, or the United Kingdom, and other jurisdictions agreed in writing between the parties.

**Insolvency Event** means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint

any such person and the action is not stayed, withdrawn or dismissed within seven days;

- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; or
- (i) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

**Losses** means all claims, actions, proceedings, liabilities, obligations, damages, loss, charges, costs, expenses and duties or other outgoings.

**New Unity Shares** means the Unity Shares to be issued as Scheme Consideration.

**Option** means an option to subscribe for Cortona Shares issued by Cortona.

**Optionholder** means a person who is registered in Cortona's register of optionholders as the holder of an Option.

**Record Date** means 5.00pm on the fifth Business Day following the Effective Date or such other date and time as the parties agree.

**Register** means the register of members of Cortona maintained by or on behalf of Cortona in accordance with the Corporations Act.

**Regulator's Draft** means the draft of the Scheme Booklet in a form reasonably acceptable to Cortona, which is provided to ASIC for review pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**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 confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

**Related Entity** of a party means another entity which:

- (a) is a related body corporate of the first entity;
- (b) is in any consolidated entity which contains the party; or
- (c) the party controls,

provided that to avoid doubt for the purposes of this document Unity and its Related Entities as at the date of this document will not be taken to be Related Entities of Cortona, and Cortona and its Related Entities as at the date of this document will not be taken to be Related Entities of Unity.

**Representative** means, in relation to a party:

- (a) each of the party's Related Entities; and
- (b) each of the officers, employees and Advisers of the party or of any of its Related Entities.

**Sale Facility Agent** means the appropriately licensed agent appointed by Unity to administer the facility under which New Unity Shares to which Ineligible Foreign Shareholders would otherwise have become entitled under the Scheme are sold in accordance with the Scheme.

**Scheme** means the proposed scheme of arrangement between Cortona and the Cortona Shareholders under Part 5.1 of the Corporations Act substantially in the form of **annexure A** which if implemented will give effect to the merger between Cortona and Unity as described in **clause 4.1**, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Cortona and Unity.

**Scheme Booklet** means the information to be despatched to Cortona Shareholders and approved by the Court, including the Scheme, explanatory statement in relation to the Scheme issued pursuant to section 412 of the Corporations Act and registered with ASIC, the Independent Expert's report, the Deed Poll, a summary of this document and a notice convening the Scheme Meeting (together with proxy forms).

**Scheme Consideration** means in respect of each Scheme Share held by a Scheme Participant, 0.734 New Unity Shares (subject to the terms of the Scheme).

**Scheme Meeting** means the meeting ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme.

**Scheme Order** means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Scheme Participant** means each holder of Scheme Shares as at the Record Date.

**Scheme Shares** means all the Cortona Shares on issue on the Record Date.

**Second Court Date** means the first day on which an application made to the Court for the Scheme Order is heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

**Share Splitting** means a Cortona Shareholder splitting its holding of Scheme Shares into 2 or more parcels, or a number of affiliated persons acquiring a number of parcels in different names or other manipulative conduct resulting in an increased number of shareholdings in Cortona.

**Superior Proposal** means a publicly announced bona fide proposal received after the date of this document which with respect to Cortona, the Cortona Board determines, acting in good faith and in order to satisfy what the Cortona Board considers to be its fiduciary and statutory duties (after having taken advice from its independent legal and financial advisers):

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the proposal; and
- (b) would, if completed in accordance with its terms, be more favourable to Cortona Shareholders than the Scheme, taking into account all terms of the proposal.

**Takeovers Panel** means the body established under section 171 of the *Australian Securities and Investments Commission Act 2001* (Cth) as the primary forum for resolving disputes about takeovers.

**Third Party** means any of the following:

- (a) a person other than Unity, Cortona or any of their related bodies corporate; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which neither Unity nor any of its related bodies corporate has agreed in writing to be a participant.

**Timetable** means the indicative timetable set out in **schedule 2** or such other timetable as may be agreed in writing by the parties.

**Trading Day** has the meaning given in the ASX Listing Rules.

**Transaction** means the acquisition by Unity of all of the Scheme Shares through the implementation of the Scheme as contemplated in this document.

**Unity Board** means the board of directors of Unity (as constituted from time to time).

**Unity Counterproposal** has the meaning given to it in **clause 8.6(c)**

**Unity Director** means a director of Unity.

**Unity Disclosure Materials** means all written information in connection with the Transaction or relating to the Unity Group's past, present or future operations, affairs, business and/or strategic plans, which has been provided to Cortona or its Representatives prior to the date of this document or publicly announced prior to the date of this document.

**Unity Group** means Unity and each of its Related Entities.

**Unity Information** means such information regarding Unity and the Unity Group provided by or on behalf of Unity to Cortona or the Independent Expert to enable the Scheme Booklet to be prepared and completed.



**Unity Material Adverse Change** means a matter, event or circumstance that occurs, is announced or becomes known to Unity (whether or not it becomes public) where that matter, event or circumstance has, has had, or could reasonably be expected to have, individually or when aggregated with all such matters, events or circumstances, the result that:

- (a) there is or would be reasonably likely to be a material adverse effect on the assets, liabilities, business, results, operations, trading or financial position or material licenses of the Unity Group;
- (b) the Unity Group is unable to carry on its business in substantially the same manner as carried on as at the date of this document, or which otherwise materially and adversely affects the prospects of the Unity Group;
- (c) the amount which is equal to the aggregate of cash, plus receivables, less trade creditors, of the Unity Group falls below \$30 million; or
- (d) other than where consented to by Cortona, any of the Unity Material Permits are revoked, not renewed or otherwise cease to be held by the Unity Group,

other than an event, occurrence or matter:

- (e) required to be done or procured by Unity pursuant to this document or the Transaction;
- (f) which is, and to the extent that it is, fairly disclosed in the Unity Disclosure Materials, or otherwise known to Cortona;
- (g) which relates to changes in business conditions affecting the Australian gold industry generally or the financing of projects generally in the Australian gold industry;
- (h) which relates to interest rates, commodity prices or currency exchange rates; or
- (i) which is, and to the extent that it is, a consequence of Losses covered by insurance which Unity's insurers have agreed to pay.

**Unity Material Permits** means mining lease 7M/1991, mining lease 7M/2006, mining lease 5M/2002, exploration licence 8/2009, exploration licence 1/2010, exploration licence 34/2010, exploration licence 11/2010, exploration licence 28/2001 and exploration licence 13/2011 held by the Unity Group.

**Unity Material Transaction** means, other than:

- (a) as expressly contemplated by this document or the Transaction;
- (b) to the extent that it is fairly disclosed in the Unity Disclosure Materials; or
- (c) with the prior written consent of Cortona,

the occurrence of any of the following:

- (d) the Unity Group changes in any material respect the nature of its business;

- (e) Unity or any subsidiary of Unity agrees to incur or incurs any financial indebtedness or issues any indebtedness or debt securities or varies any proposed financial indebtedness terms other than in the ordinary course of ordinary business or pursuant to advances under the Unity's existing debt facilities as at the date of this document;
- (f) Unity or any subsidiary of Unity makes any loans, advances or capital contributions other than:
  - (i) to or in Unity or any wholly-owned subsidiary of Unity; or
  - (ii) in the ordinary course of business,and where the total amount involved in the relevant transactions in the period until the Second Court Date is less than \$3 million;
- (g) Unity or any of its material subsidiaries ceases, or threatens to cease, to carry on business;
- (h) Unity or any of its material subsidiaries becomes subject to an Insolvency Event or is deregistered as a company or otherwise dissolved;
- (i) Unity or any of its material subsidiaries disposes, or agrees to dispose, of any asset (including an exploration licence) other than:
  - (i) in the ordinary course of business, or as contemplated by an ASX announcement made prior to the date of this document; or
  - (ii) where the amount involved in the relevant transactions in total in the period until the Second Court Date is less than \$3 million;
- (j) Unity or any of its material subsidiaries acquires, or agrees to acquire, any asset (including an exploration licence) other than:
  - (i) in the ordinary course of business; or
  - (ii) where the amount involved in the relevant transactions in total in the period until the Second Court Date is less than \$5 million;
- (k) any member of the Unity Group issuing, or agreeing to issue, securities convertible into shares or debt securities (other than any performance rights or options issued to directors, officers or employees of the Unity Group);
- (l) Unity converting all or any of its shares into a larger or smaller number of shares; or
- (m) any member of the Unity Group resolving to reduce, or reducing, its share capital in any way, or reclassifying, redeeming, combining, splitting or indirectly any of its shares.

**Unity Shareholder** means each person who is registered in the register of members of Unity maintained by or on behalf of Unity in accordance with the Corporations Act as the holder of Unity Shares.

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

**Unity Transaction** means, other than:

- (a) as expressly contemplated by this document or the Transaction;
- (b) to the extent that it is fairly disclosed in the Unity Disclosure Materials; or
- (c) with the prior written consent of Cortona,

the occurrence of any of the following:

- (d) Unity or any of its subsidiaries issues, or agrees to issue, or grants an option to subscribe for, debentures (as defined in section 9 of the Corporations Act), other than to a wholly-owned subsidiary of Unity;
- (e) Unity makes any change to its constitution or other constituent documents;
- (f) Unity or any subsidiary of Unity disposes, or agrees to dispose, of shares in a wholly owned subsidiary of Unity;
- (g) other than in accordance with the Unity buy-back announced on 8 February 2012, any member of the Unity Group resolving to buy back, or buying back, any of its shares, including by:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (h) any member of the Unity Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, other than:
  - (i) to a wholly-owned subsidiary of Unity;
  - (ii) an issue of Unity Shares following the valid exercise or conversion of any convertible securities on issue at the date of this document; or
  - (iii) performance rights under a Unity Group management incentive scheme;
- (i) any member of the Unity Group making, in aggregate, capital expenditure in excess of \$3 million, other than as contemplated in the Unity Group budget for the financial year ending 30 June 2013 as disclosed to Cortona;
- (j) any member of the Unity Group:
  - (i) acquiring, leasing or disposing of;
  - (ii) agreeing to acquire, lease or dispose of; or
  - (iii) offering, proposing or announcing a bid or tenders for, any material business, assets (other than trading inventories and consumables in the ordinary and usual course of business) or entity with a value greater than \$3 million, or enters into joint venture, partnership or similar arrangement;

- (k) other than in the ordinary course of business, any member of the Unity Group:
  - (i) entering into any contracts or commitments either individually or collectively involving revenue or expenditure of more than \$3 million over the term of the contract or commitment;
  - (ii) terminating or amending in a material manner any contracts of the Unity Group's business which either individually or collectively involve expenditure or revenue of more than \$3 million over the term of the contract;
  - (iii) paying, discharging or satisfying any claims, liabilities or obligations under any contracts or commitments involving revenue or expenditure of more than \$3 million other than the payment, discharge or satisfaction consistent with past practice and in accordance with its terms; or
  - (iv) waiving any material claims or rights under, or waiving the benefit of any provision of, any contracts or commitments involving revenue or expenditure of more than \$3 million,  
other than contracts or commitments associated with the implementation of the Transaction;
- (l) Unity or any subsidiary of Unity create, or agree to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the ordinary course of business and consistent with past practice; or
- (m) other than where consented to by Cortona, any member of the Unity Group disposing of, relinquishing or surrendering all or any part of any of the Unity Material Permits or any interest in the Unity Material Permits.

## 1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

- (ii) a person includes the person's legal personal representatives, successors, permitted assigns and persons substituted by permitted novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Perth;
  - (vii) '\$' or 'dollars' is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced by agreement between the parties and despite any change in the identity of the parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) this document includes all schedules and annexures to it;
  - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
  - (xii) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this document; and
  - (xiii) a reference to the ASX Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (i) any provision of this document that requires a statement or recommendation in relation to the Scheme to be made or maintained by:
- (i) each Cortona Director; or
  - (ii) the Cortona Board acting unanimously or collectively,
- is deemed to be satisfied by such statement or recommendation being made or maintained by each Cortona Director who is not precluded from making or maintaining such statement or recommendation; and

- (j) a reference to any statement, including a warranty made by a party on the basis of its knowledge, belief or awareness, is made on the basis of the actual knowledge, belief or awareness of the officers of the party (and no other persons) as at the date of this document.

### **1.3 Headings**

Headings do not affect the interpretation of this document.

### **1.4 Reasonable endeavours**

Any provision of this document that requires a party to use reasonable endeavours, or to take all steps reasonably necessary, to procure that something is performed or occurs does not include any obligation:

- (a) to pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency or fees to any professional advisers; or
- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens,

except where that provision expressly specifies otherwise.

### **1.5 Determination of good faith**

In determining whether a party has acted in good faith the matters to be considered are whether the party:

- (a) responded within a reasonable time to telephone calls and other communications, including requests for information and for meetings;
- (b) attended meetings;
- (c) did not make capricious or arbitrary changes of position; and
- (d) demonstrated throughout the negotiations a preparedness to negotiate and a genuine desire to reach agreement.

## **2 Implementation of the Scheme**

### **2.1 Agreement to implement Transaction**

The parties agree to implement the Transaction on the terms set out in this document.

### **2.2 Cortona to propose Scheme**

Cortona agrees to propose the Scheme on and subject to the terms set out in this document.

### **2.3 Unity to assist with the Scheme**

Unity agrees to assist Cortona to propose the Scheme on and subject to the terms set out in this document.

### 3 Conditions Precedent

#### 3.1 Conditions precedent

Subject to this **clause 3**, the Scheme will not become Effective and the obligations of Unity under **clause 4.2** are not binding unless each of the Conditions Precedent are satisfied or waived to the extent and in the manner set out in **clauses 3.2 to 3.5**.

#### 3.2 Benefit and waiver of certain Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by a party entitled to the benefit of the Condition Precedent as noted in the table set out in **schedule 1**.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this **clause 3.2** may do so in its absolute discretion.
- (c) A waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstances.

#### 3.3 Reasonable endeavours

- (a) Each party must use all reasonable endeavours to procure that:
  - (i) each of the Conditions Precedent for which it is responsible, as noted in the table set out in **schedule 1**, is satisfied as soon as practicable after the date of this document, and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require), with a view to the Effective Date occurring on or before the End Date, provided that the parties are not obliged to waive any Condition Precedent; and
  - (ii) there is no event or circumstance within the reasonable control or influence of that party that would prevent the Conditions Precedent being satisfied.
- (b) Without limiting its obligations under **clause 3.3(a)**, each party must not do or omit to do (and must procure that its related bodies corporate do not do or omit to do) anything designed, intended or which would otherwise be reasonably expected to result in any of the Conditions Precedent being breached or to prevent any of the Conditions Precedent being satisfied.

#### 3.4 Regulatory Approvals

A Regulatory Approval required to be obtained under **clause 3.1** will be taken to have been obtained even though a condition has been attached to it if it has been granted on terms acceptable to the party in receipt of the Regulatory Approval (acting reasonably).

### 3.5 Notification of certain events

Each party must:

- (a) **keep informed:** promptly inform the other either directly or through its Advisers of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) **notice of satisfaction:** promptly notify the other if it becomes aware that any Condition Precedent has been satisfied;
- (c) **notice of failure:** promptly notify the other if it becomes aware that any Condition Precedent has failed to be satisfied or has become incapable of being satisfied or is not reasonably capable of being satisfied or of any circumstances which may reasonably be expected to lead to such a state of affairs; and
- (d) **notice of waiver:** after having given or received a notice in accordance with **clause 3.5(c)** in relation to a Condition Precedent that it is entitled under **clause 3.2(a)** to waive, give notice to the other party as soon as reasonably practicable (and in any event no later than five Business Days before, or such shorter time to ensure that notice is given before, 5.00 pm on the last Business Day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of the relevant Condition Precedent, specifying the Condition Precedent in question.

### 3.6 Scheme voted down

If the Scheme is not approved by Cortona Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test, and Unity or Cortona considers, acting reasonably, that Share Splitting or other improper conduct may have caused or materially contributed to the Headcount Test not having been satisfied then Cortona must:

- (a) seek the Scheme Order, notwithstanding that the Headcount Test has not been satisfied;
- (b) make such submissions to the Court and file such evidence as counsel engaged by Cortona to represent it in all Court proceedings related to the Scheme, in consultation with Unity, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test; and
- (c) if the Court agrees to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test, the parties acknowledge that it will not be necessary to meet the Headcount Test in order to satisfy the Condition Precedent in **item 9 of schedule 1**.

### 3.7 Consultation if Conditions Precedent not met

If:



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

then the parties must consult in good faith with a view to determining whether:

- (c) the Transaction may proceed by way of alternative means or methods and, if so, to agree on the terms of such alternative means or methods;
- (d) to extend the relevant time or date for satisfaction of the Conditions Precedent;
- (e) to change the date of the application to be made to the Court for the Scheme Order or adjourning that application (as applicable) to a later date agreed by the parties (and failing agreement Cortona may extend this date without Unity's agreement provided that Cortona believes there are reasonable prospects of satisfying the relevant Condition Precedent by the extended date and provided that the extended date may not be later than two weeks prior to the End Date, provided that Cortona gives Unity reasonable prior written notice of such extension and the reasons for its belief that there are reasonable prospects of satisfying the relevant Condition Precedent); or
- (f) to extend the End Date.

### **3.8 Failure to agree**

- (a) If the parties are unable to reach agreement under **clause 3.7** within five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date), then unless that Condition Precedent is waived in accordance with **clause 3.2**, a party entitled to the benefit of that Condition Precedent may (subject to **clause 3.8(b)**) terminate this document.
- (b) A party will not be entitled to terminate this document pursuant to **clause 3.8(a)** if the relevant Condition Precedent has not been satisfied as a result of:
  - (i) a breach of this document by that party; or
  - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that condition being satisfied.
- (c) Termination of this document under **clause 3.8(a)** does not affect any accrued rights of either party arising from any breach of this document prior to termination.

## 4 Scheme

### 4.1 Scheme

Subject to the terms of this document and of the Scheme, Cortona must propose the Scheme, under which on the Implementation Date:

- (a) all of the Scheme Shares held by Scheme Participants will be transferred to Unity; and
- (b) the Scheme Participants will receive the Scheme Consideration.

### 4.2 Scheme Consideration

- (a) Subject to the terms of the Scheme, Unity covenants in favour of Cortona (in its own right and separately as trustee or nominee for each of the Cortona Shareholders), that in consideration for the transfer to Unity of the Scheme Shares held by a Scheme Participant under the terms of the Scheme, Unity will on the Implementation Date:
  - (i) accept that transfer; and
  - (ii) in accordance with the Deed Poll and this document, provide to each Scheme Participant the Scheme Consideration.
- (b) If a fractional entitlement to a New Unity Share arises from the calculation of the Scheme Consideration payable to a Scheme Participant, then the fractional entitlement to a New Unity Share will be rounded down to the nearest whole number.

### 4.3 Ineligible Foreign Shareholders

Unless the parties are reasonably satisfied that the issue of New Unity Shares to an Ineligible Foreign Shareholder is neither prohibited by law nor unduly onerous under the laws of the relevant jurisdiction:

- (a) Unity has no obligation to allot and issue New Unity Shares to the Ineligible Foreign Shareholders; and
- (b) Unity must issue to the Sale Facility Agent for sale the number of New Unity Shares to which the Ineligible Foreign Shareholder would otherwise be entitled under the Scheme, and the net proceeds of sale will be distributed amongst those Ineligible Foreign Shareholders in accordance with the Scheme.

## 5 Steps for implementation

### 5.1 Mutual obligations

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

- (a) **Regulatory Approvals:**
  - (i) apply in a timely manner for all relevant Regulatory Approvals, providing a copy to the other party of all such applications, and take all steps it is responsible for as part of the approval process

for the Scheme, including responding to requests for information at the earliest practicable time; and

- (ii) use reasonable endeavours to consult with the other in advance in relation to all material Communications with any Governmental Agency relating to any Regulatory Approval and provide the other party with all information reasonably requested in connection with the application for any Regulatory Approval from a Governmental Agency;
- (b) **certificate:** subject to the satisfaction and/or waiver of the Conditions Precedent, provide the Court on the Second Court Date with a certificate that all of the Conditions Precedent (other than the Condition Precedent requiring Court approval of the Scheme) are satisfied, or if not satisfied, are waived. A draft of such certificate must be provided by each party to the other party by 5.00pm on the Business Day before the Second Court Date;
- (c) **timing:** consult with each regularly in relation to the Timetable for performing their respective obligations; and
- (d) **compliance with obligations:** use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external Advisers) so as to implement the Transaction as soon as reasonably practicable and substantially in accordance with the Timetable.

## 5.2 Cortona's obligations

Without limiting the general nature of **clause 2**, Cortona must comply with its obligations in **schedule 3** and must take all reasonable steps that are necessary or reasonably requested by Unity to implement the Scheme on a basis consistent with this document, in accordance with the Timetable and in any event before the End Date.

## 5.3 Unity's obligations

Without limiting the general nature of **clause 2**, Unity must comply with its obligations in **schedule 4** and must take all reasonable steps that are necessary or reasonably requested by Cortona to implement the Scheme on a basis consistent with this document, in accordance with the Timetable and in any event before the End Date.

## 5.4 Access to people and Cortona information

- (a) During the Exclusivity Period, Cortona must provide Unity and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them, and reasonable access to Cortona's officers and advisers which Unity reasonably requires, for the purposes of implementing the Scheme, provided that:

- (i) such requests for information or access does not place an unreasonable burden on the ability of Cortona to run its business; and
  - (ii) nothing in this **clause 5.4(a)** requires Cortona to provide Unity with information concerning Cortona's consideration of the Transaction or assessment of Unity.
- (b) During the Exclusivity Period, Unity must provide Cortona and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them, and reasonable access to Unity's officers and advisers which Cortona reasonably requires, for the purposes of implementing the Scheme, provided that:
- (i) such requests for information or access does not place an unreasonable burden on the ability of Unity to run its business; and
  - (ii) nothing in this **clause 5.4(b)** requires Unity to provide Cortona with information concerning Unity's consideration of the Transaction or assessment of Cortona.

## 5.5 Preparation of the Scheme Booklet

- (a) **Preparation:** without limiting **clauses 5.2** or **5.3**:
- (i) Cortona is generally responsible for the preparation of the Scheme Booklet but will provide drafts to and consult with Unity in accordance with **clause 5.5(b)**;
  - (ii) Cortona must take all necessary steps to endeavour to ensure that the Cortona Information included in the Scheme Booklet:
    - (A) complies with the requirements of:
      - (1) the Corporations Act;
      - (2) the Corporations Regulations;
      - (3) ASIC Regulatory Guide 60; and
      - (4) the ASX Listing Rules; and
    - (B) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission);
  - (iii) Unity must take all necessary steps to endeavour to ensure that the Unity Information included in the Scheme Booklet:
    - (A) complies with the requirements of:
      - (1) the Corporations Act;
      - (2) the Corporations Regulations;
      - (3) ASIC Regulatory Guide 60; and
      - (4) the ASX Listing Rules; and

- (B) is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission).
- (b) **Consultation on Scheme Booklet:** without limiting **clause 5.2**, Cortona must:
  - (i) consult with Unity regarding the Scheme Booklet, including:
    - (A) as soon as reasonably practicable after the date of this document, provide to Unity an initial draft of the Scheme Booklet for the purpose of enabling Unity to review and comment on that draft document;
    - (B) provide to Unity amended drafts of the Scheme Booklet as reasonably agreed for the purpose of enabling Unity to review and comment on those draft documents;
    - (C) take the comments made by Unity into account in good faith when producing revised drafts of the Scheme Booklet; and
    - (D) provide to Unity a revised penultimate draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Unity to review the Regulator's Draft at least five Business Days before its submission;
  - (ii) implement such changes to those parts of the Scheme Booklet relating to Unity which are provided in accordance with **clause 5.5(b)(i)** as reasonably requested by Unity and prior to finalising the Regulator's Draft;
  - (iii) as soon as reasonably practicable after finalisation of an advanced draft of the Regulator's Draft suitable for review by ASIC, procure that a meeting of the Cortona Directors convened to consider approving the Regulator's Draft as being in a form appropriate for provision to ASIC for review;
  - (iv) during the Regulatory Review Period:
    - (A) promptly provide to Unity, and include in a revised draft of the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, the Corporations Regulations, ASIC Regulatory Guide 60 or the Listing Rules to be included in the Scheme Booklet; and
    - (B) keep Unity informed of any matters raised by ASIC in relation to the Scheme Booklet and use best endeavours, in co-operation with Unity, to resolve any such matters; and
  - (v) obtain approval from Unity for the form and context in which the Unity Information appears in the Scheme Booklet, which approval must not be unreasonably delayed or withheld.
- (c) **Unity information:** without limiting **clause 5.3**, Unity:

- (i) consents to the inclusion of the Unity Information in the Scheme Booklet in the form and context approved by it; and
- (ii) acknowledges that:
  - (A) it is responsible for ensuring that the Unity Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Cortona will not verify or edit the final form of that information in the Scheme Booklet; and
  - (B) the Scheme Booklet will state that Unity is responsible for the Unity Information.
- (d) **Disagreement on content:**
  - (i) If Unity and Cortona disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet.
  - (ii) If complete agreement is not reached after reasonable consultation, then:
    - (A) if the disagreement relates to the form or content of the Unity Information contained in the Scheme Booklet, Cortona will make such amendments as Unity reasonably requires; and
    - (B) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Cortona Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.
- (e) **Verification:** each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet and must provide each other with full and free access to, and on request (acting reasonably), copies of all materials and documents used or created in connection with their respective verification processes, and must maintain those materials and documents for at least 7 years from the date of this document for that purpose.

## 5.6 Court proceedings

- (a) **Appeal process:** if the Court refuses to make an order convening the Scheme Meeting or approving the Scheme, at Unity's request Cortona must appeal the Court's decision to the fullest extent possible, except to the extent that:
  - (i) the parties agree otherwise; or
  - (ii) an independent senior counsel indicates that, in their view, an appeal would have a less than 50% prospect of success,
 in which case either party may terminate this document.
- (b) **Defence of proceedings:** each of the parties must vigorously defend, or must cause to be vigorously defended, any lawsuits or other claims or proceedings (including any Takeovers Panel proceedings) brought

against it (or any member of the Unity Group or Cortona Group) challenging this document or the completion of the Transaction. Neither Unity nor Cortona may settle or compromise (or permit any member of the Unity Group or Cortona Group to settle or compromise) any claim brought in connection with this document without the prior written consent of the other, such consent not to be unreasonably withheld.

- (c) **Costs:** any costs incurred as a result of the operation of this **clause 5.6** are to be borne equally by the parties.

## 5.7 Cortona Board and Unity Board

- (a) Unity must, as soon as practicable, after the Scheme becomes Effective, ensure that:
- (i) Clive Jones is appointed as a non-executive director and chairman of Unity; and
  - (ii) Peter van der Borgh is appointed as an executive director of Unity;
  - (iii) Peter McCarthy resigns as a non-executive director and chairman of Unity as soon as practicable after the Scheme becomes Effective.

To avoid doubt, Andrew McIlwain will remain as managing director and chief executive officer of Unity and Ronnie Beevor and David Ransom will remain as non-executive directors of Unity.

- (b) Cortona must as soon as practicable:
- (i) after the Second Court Date, take all actions necessary to cause the appointment as directors of Cortona of such number of persons nominated by Unity as would constitute those nominees (acting together) as a majority of the directors on the Cortona Board; and
  - (ii) after the Scheme Consideration has been paid, ensure that all directors on the Cortona Board other than the Unity nominees and Clive Jones and Peter van der Borgh resign, and that each resigning director provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Cortona.
- (c) Cortona represents and warrants to Unity that each director of Cortona, other than Clive Jones and Peter van der Borgh, has confirmed that he will resign as soon as practicable after the Scheme becomes Effective, provided that a proper board is constituted at all times.

## 5.8 Options

- (a) Each party must use its reasonable endeavours to procure that the Options are cancelled prior to the Record Date.
- (b) Cortona will seek a waiver from the ASX in relation to the requirements of ASX Listing Rule 6.23 in order to allow the cancellation of the Options without a meeting of Cortona Shareholders.

- (c) Cortona will prepare a deed to give effect to the cancellation of the Options, which is intended to be entered into by Cortona and each Optionholder as at the date immediately before the Record Date, which will provide for the cancellation of the Options in consideration for the payment in immediately available funds of a cash amount determined using the Black-Scholes valuation methodology. Any consideration payable for the cancellation of the Options is to be payable on or about the same date as the Scheme Consideration is payable to Scheme Participants.

## **6 Conduct of business**

### **6.1 Conduct of Cortona's business**

During the Exclusivity Period, Cortona must:

- (a) procure that the Cortona Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this document and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals;
- (b) to the extent consistent with that obligation, use its reasonable endeavours to preserve intact the Cortona Group's current business organisation, to keep available the services of the current officers of it and its related bodies corporate and to preserve the Cortona Group's relationship with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with it; and
- (c) not permit any Cortona Material Transaction,

except to the extent required to be done or procured by Cortona pursuant to, or which is otherwise expressly permitted by, this document, or the undertaking of which Unity has approved in writing, such approval not to be unreasonably withheld or delayed.

### **6.2 Conduct of Unity's business**

During the Exclusivity Period, Unity must:

- (a) procure that the Unity Group conducts its business and operations in the ordinary course and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation has been conducted in the period prior to the date of this document and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals;
- (b) to the extent consistent with that obligation, use its reasonable endeavours to preserve intact the Unity Group's current business organisation, to keep available the services of the current officers of it and its related bodies corporate and to preserve the Unity Group's



relationship with Governmental Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with it;

- (c) not permit any Unity Material Transaction; and
- (d) Unity must:
  - (i) use reasonable endeavours to consult with Cortona in advance of; and
  - (ii) provide Cortona with all information reasonably requested in connection with,

the occurrence of any Unity Transaction, and must consider any reasonable requests made by Cortona in relation to such matters,

except to the extent required to be done or procured by Unity pursuant to, or which is otherwise expressly permitted by, this document, or the undertaking of which Cortona has approved in writing, such approval not to be unreasonably withheld or delayed.

## 7 Break fee

### 7.1 Payment of costs

- (a) This **clause 7** has been agreed to in circumstances where:
  - (i) each party believes that the Transaction will provide benefits to Cortona, Unity, Cortona Shareholders and Unity Shareholders and acknowledges that if Cortona and Unity enter into this document and the Transaction is subsequently not implemented, each party will incur significant costs;
  - (ii) each party requested that provision be made for the payments referred to in **clause 7.2** and **7.3**, without which no party would have entered into this document;
  - (iii) the board of directors of each party believe that it is appropriate for both parties to agree to the payments referred to in **clause 7.2** and **7.3** in order to secure the other party's participation;
  - (iv) the parties acknowledge that the payments referred to in **clause 7.2** and **7.3** represent a reasonable amount to compensate Cortona or Unity for the following:
    - (A) advisory costs (including costs of its Advisers);
    - (B) costs of management and directors' time;
    - (C) out of pocket expenses; and
    - (D) reasonable opportunity costs in pursuing the Transaction or not pursuing other alternative acquisitions or strategic initiatives,

in each case, incurred by Cortona or Unity directly or indirectly as a result of having entered into this document and pursuing the Transaction;

- (v) the parties acknowledge that:
  - (A) the amount of fees, costs and Losses comprised in the payments referred to in **clause 7.2** and **7.3** is inherently unascertainable and that, even after termination of this document, the cost will not be able to be accurately ascertained; and
  - (B) the amount of the payments referred to in **clause 7.2** and **7.3** is a genuine and reasonable pre-estimate of those fees, costs and Losses (it being acknowledged by the parties that the costs would most likely be in excess of this amount); and
- (vi) both parties have received legal advice in relation to this document and the operation of this **clause 7**.

## 7.2 Payment of the Break Fee by Cortona

- (a) Subject to clauses **7.2(b)** and **7.4(a)**, Cortona must pay Unity the Break Fee in accordance with **clause 7.5(a)**, without withholding or set off, if:
  - (i) **Cortona Directors' recommendation:** at any time during the Exclusivity Period, any Cortona Director changes their recommendation or ceases or fails to recommend to Cortona Shareholders that they vote in favour of the resolution to approve the Scheme, including any adverse modification to their recommendation, or otherwise make a public statement that they no longer support the Scheme, other than where a Cortona Director does any of these things as a result of the Independent Expert concluding (either initially or in any updated report) that the Scheme is not in the best interests of Cortona Shareholders;
  - (ii) **Competing Proposal:**
    - (A) at any time during the Exclusivity Period, a Competing Proposal is announced or made and is publicly recommended, promoted or otherwise endorsed by any of the Cortona Directors; or
    - (B) a Competing Proposal is announced or made before the expiry of the Exclusivity Period, and is completed at any time prior to the first anniversary of the date of this document and, as a result, a Third Party acquires a relevant interest and/or economic interest in at least 50% of the Cortona Shares; or
  - (iii) **Cortona material breach:** Unity terminates this document in accordance with **clause 11.1(c)**.
- (b) Despite any other term of this document, the Break Fee is only payable once and will not be payable to Unity if Cortona is entitled to terminate this document under **clause 11.1(c)**.

### 7.3 Payment of the Break Fee by Unity

- (a) Subject to **clause 7.3(b) and 7.4(a)**, Unity must pay Cortona the Break Fee in accordance with **clause 7.5(a)**, without withholding or set off, if Cortona terminates this document in accordance with **clause 11.1(c)**.
- (b) Despite any other term of this document, the Break Fee is only payable once and will not be payable to Cortona if Unity is entitled to terminate this document under **clause 11.1(c)**.

### 7.4 Compliance with law

- (a) This **clause 7** does not impose an obligation on a party to pay any amount to the extent (and only to the extent) that a court or the Takeovers Panel determines the obligation:
  - (i) constitutes or would, if performed, constitute:
    - (A) a breach of the fiduciary or statutory duties of the Cortona Board or the Unity Board; or
    - (B) unacceptable circumstances; or
  - (ii) is unenforceable or would, if paid, be unlawful for any reason.

The parties must take all reasonable steps to ensure that any such determination applies to the minimum extent possible.
- (b) The parties must not make, cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in **clause 7.4(a)** and, subject to **clause 7.4(c)**, must use all reasonable endeavours to ensure that no such determination is made.
- (c) If in Takeovers Panel proceedings described in **clause 7.4(a)**, the Takeovers Panel indicates to Cortona and Unity or either of them that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) it will make a declaration of unacceptable circumstances, each of Cortona and Unity (as the case may be) may give that undertaking on their own behalf and must give reasonable consideration to giving that undertaking if requested by the other party. Where such undertakings are given, this **clause 7** will operate in a manner consistent with the terms of such undertakings.

### 7.5 Time for payment

- (a) If an amount is payable by a party under this **clause 7**, that party must pay the amount within five Business Days after receiving a written notice from the other party setting out the relevant circumstances and requiring payment of the amount.
- (b) A written notice requiring payment of an amount under this **clause 7**, may only be made after the occurrence of the event giving rise to such payment as referred to in **clause 7.2 or 7.3**.

## 8 Exclusivity

### 8.1 Termination of existing discussions

At the date of this document, Cortona represents and warrants to Unity that it has terminated all other negotiations or discussions with any other person which may reasonably be expected to lead to a Competing Proposal.

### 8.2 No shop restriction

During the Exclusivity Period, Cortona must not, and must use all reasonable endeavours to ensure that each of its Representatives does not, except with the prior written consent of Unity, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or which may reasonably be expected to lead to, a Competing Proposal, or communicate to any person an intention to do any of those things.

### 8.3 No talk restriction

During the Exclusivity Period, Cortona must not, and must use all reasonable endeavours to ensure that each of its Representatives do not, except with the prior written consent of Unity, enter into, facilitate, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or which may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by the party or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced,

unless the Cortona Board, acting in good faith and in order to satisfy what the Cortona Board reasonably considers to be its fiduciary or statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal but only if that Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Cortona or any of its Representatives in a manner that would breach its obligations under this **clause 8.3** or **clause 8.2**.

### 8.4 Provision of information

- (a) Cortona must, and must (where necessary) cause its Representatives to, within 2 Business Days provide Unity with any information or due diligence materials (including responses to requests for further information) provided or made available to any Third Party who is or may be considering a Competing Proposal (other than identical copies of documents that have previously been provided to those other parties).
- (b) Such provision of information or materials to a Third Party referred to in this **clause 8.4** is only permitted to be undertaken pursuant to **clause 8.3** and only after the Third Party has executed a confidentiality agreement on customary terms.

## 8.5 Notification of approaches

- (a) During the Exclusivity Period, Cortona must notify Unity within 24 hours in writing if it or any of its Representatives:
  - (i) is contacted by, or has discussions or negotiations with, any person in connection with a matter (including a proposal) that relates or may lead to a Competing Proposal, or otherwise becomes aware of such a matter; or
  - (ii) proposes or is asked to take any of the action referred to in **clauses 8.2 and 8.3**,  
  
(each a **Competing Proposal Notice**).
- (b) The Competing Proposal Notice given under **clause 8.5(a)** must be accompanied by all material details of the relevant event (including all material terms of any Competing Proposal such as the consideration proposed to be offered under the transaction and any conditions to which the transaction would be subject), however will not be required to include details of the identity of any Third Parties (including, for the avoidance of doubt, a Third Party who proposes to make or otherwise be involved in a Competing Proposal).
- (c) A Competing Proposal Notice and any information provided with a Competing Proposal will be provided subject to the terms of the Confidentiality Agreement.
- (d) For the avoidance of doubt, if Cortona gives Unity a Competing Proposal Notice, it will still be required to, in accordance with this **clause 8.5**, notify Unity of all future events of a kind referred to in **clause 8.5(a)** which relate to the first-mentioned event (whether or not it is relying on an exception to **clause 8.3** as contained in that clause).

## 8.6 Unity's right to match Competing Proposal

- (a) Cortona must not enter into any agreement, arrangement or understanding in relation to the Competing Proposal, unless:
  - (i) Cortona gives Unity a Competing Proposal Notice in relation to the Competing Proposal; and
  - (ii) a period of 2 Business Days has elapsed from the date on which Unity receives that notification.
- (b) Despite anything in **clause 8.6(a)**, to the extent required to satisfy what the Cortona Board have determined in good faith to be their fiduciary or statutory obligations, the Cortona Board may release a public announcement acknowledging the receipt of a Competing Proposal and:
  - (iii) recommending that Cortona Shareholders take no action in relation to a Competing Proposal; and
  - (iv) reserving its position in relation to its recommendation of the Competing Proposal and the Scheme.

- (c) If Cortona gives a Competing Proposal Notice, Unity will have the right, but not the obligation, at any time until the expiration of 2 Business Days following receipt of the Competing Proposal Notice to:
- (i) offer to amend the terms of the Scheme; or
  - (ii) to propose any other transaction,
- which must be submitted to Cortona in writing (each **Unity Counterproposal**), and if Unity does so, the Cortona Board must review the Unity Counterproposal in good faith to determine whether the Unity Counterproposal is more favourable to Cortona Shareholders than the Competing Proposal.
- (d) If the Cortona Board determines, in good faith and after having obtained written advice from its legal and financial advisers, that the Unity Counterproposal:
- (i) would provide a superior outcome for the Cortona Shareholders than the Competing Proposal (it being acknowledged that the Unity Counterproposal does have to be above the price or value implied by the Competing Proposal for the Cortona Board to consider the Unity Counterproposal in relation to price to be superior); and
  - (ii) the other terms of the Unity Counterproposal taken as a whole are not less favourable than those under the Competing Proposal,
- then:
- (iii) if the Unity Counterproposal contemplates an amendment to the Scheme, the parties must enter into a deed amending this document and all other necessary documents to reflect the Unity Counterproposal; and
  - (iv) if the Unity Counterproposal contemplates any other transaction, Cortona must make an announcement as soon as reasonably practicable recommending the Unity Counterproposal, in the absence of a Superior Proposal, and the parties must pursue implementation of the Unity Counterproposal in good faith, subject to this document.

## 8.7 Compliance with the law

- (a) If a court or the Takeovers Panel determines that the agreement by the parties under this **clause 8** or any part of it:
- (i) constitutes or would, if performed, constitute:
    - (A) a breach of the fiduciary or statutory duties of the Cortona Board; or
    - (B) unacceptable circumstances; or
  - (ii) is unenforceable or would, if paid, be unlawful for any reason,
- then, to that extent (and only to that extent) the parties will not be obliged to comply with that provision of **clause 8**.

- (b) The parties must not make, cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in **clause 8.7(a)** and, subject to **clause 8.7(c)**, must use all reasonable endeavours to ensure that no such determination is made.
- (c) If in Takeovers Panel proceedings described in **clause 8.7(a)**, the Takeovers Panel indicates to the parties or either of them that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) it will make a declaration of unacceptable circumstances, each of Cortona and Unity (as the case may be) may give that undertaking on their own behalf and must give reasonable consideration to giving that undertaking if requested by the other party. Where such undertakings are given, this **clause 8** will operate in a manner consistent with the terms of such undertakings.

## 9 Representations and warranties

### 9.1 Preliminary

- (a) Each of the representations and warranties of Cortona and Unity in **clauses 9.2** and **9.4** respectively is to be read down and qualified by any matter fairly disclosed in the Cortona Disclosure Materials or the Unity Disclosure Materials and transactions contemplated by this document.
- (b) Each party acknowledges that no other party (nor any person acting on that party's behalf) has made any warranty, representation or other inducement to it to enter into this document, except for the representations and warranties expressly set out in this document.

### 9.2 Cortona representations and warranties

Cortona represents and warrants to Unity (on its own behalf and separately as trustee or nominee for each of the Unity Directors) that each of the statements set out in **schedule 5** is true and correct in all material respects as at the date of this document and as at 8.00am on the Second Court Date.

### 9.3 Cortona's indemnity

Cortona indemnifies Unity from any Losses of whatever nature and however arising which Unity or any of its officers suffers, incurs or is liable for arising out of any breach of any of the Cortona's representations and warranties in **clause 9.2**.

### 9.4 Unity representations and warranties

Unity represents and warrants to Cortona (on its own behalf and separately as trustee or nominee for each of the Cortona Directors) that each of the statements set out in **schedule 6** is true and correct in all material respects as at the date of this document and as at 8.00am on the Second Court Date.

## 9.5 Unity's indemnity

Unity indemnifies Cortona from any Losses of whatever nature and however arising which Cortona or any of its officers suffers, incurs or is liable for arising out of any breach of any of the Unity's representations and warranties in **clause 9.4**.

## 9.6 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under **clause 9.2** or **9.4**.

## 9.7 Status of representations and warranties

Each representation and warranty in this **clause 9.2** and **9.4**:

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

## 9.8 Cortona officers and employees

- (a) Unity releases its respective rights, and agrees with Cortona that it will not make a Claim, against any officer or employee of Cortona or of any of its related bodies corporate as at the date of this document in connection with:
  - (i) any breach of any representations or warranties made or given by Cortona in this document; or
  - (ii) any disclosures to Unity containing any statement which is false or misleading whether in content or by omission,except where the officer has not acted in good faith or has engaged in wilful misconduct. For the avoidance of doubt, nothing in this **clause 9.8** limits Unity's termination rights (if any).
- (b) **Clause 9.8(a)** is subject to any Corporations Act restriction and will be read down accordingly. Cortona receives and holds the benefit of **clause 9.8(a)** to the extent it relates to each officer or employee as trustee for each of them.

## 9.9 Unity officers and employees

- (a) Cortona releases its respective rights, and agrees with Unity that it will not make a claim, against any officer or employee of Unity or of any of its related bodies corporate as at the date of this document in connection with:
  - (i) any breach of any representations, covenants and warranties of Unity in this document; or



- (ii) any disclosures to Cortona containing any statement which is false or misleading whether in content or by omission,

except where the officer has not acted in good faith or has engaged in wilful misconduct. For the avoidance of doubt, nothing in this **clause 9.9** limits Cortona's termination rights (if any).

- (b) **Clause 9.9(a)** is subject to any Corporations Act restriction and will be read down accordingly. Unity receives and holds the benefit of **clause 9.9(a)** to the extent it relates to each officer and employee as trustee for each of them.

## 10 Confidentiality, public announcements and Communications

### 10.1 Confidentiality Agreement

Except as set out in **clause 10.5**, the parties acknowledge that:

- (a) the parties to the Confidentiality Agreement continue to be bound by the Confidentiality Agreement after the date of this document; and
- (b) the rights and obligations of the parties under the Confidentiality Agreement and Unity under **clause 10.1(a)** survive termination of this document.

### 10.2 Public announcements

- (a) On the Announcement Date, Cortona and Unity must issue a joint public announcement in connection with the Transaction in an agreed form.
- (b) Subject to any deadlines imposed by law or applicable stock exchange requirement and **clause 10.4**, any public announcements made in connection with the Transaction must be made outside the trading hours of ASX.
- (c) Subject to **clause 10.2(d)**, **10.4** and **10.5**, prior to making any other public announcement or disclosure in connection with the Transaction or any major public announcement regarding its business (in any such case in this clause a **Disclosure**), each party must use its reasonable endeavours to consult with the other party as to, and seek to agree with the other party (each party acting reasonably and in good faith), the form and content of that announcement or disclosure.
- (d) Subject to **clause 10.4** and **10.5**, where a party is required by applicable law or regulation, the ASX Listing Rules or any other applicable stock exchange regulation to make any Disclosure, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or applicable requirement, but in any event prior notice, and has, to the extent reasonably practicable in the context of such deadlines, consulted with the other party as to (and has given the other party a reasonable opportunity to comment on) the form and content of that Disclosure.

### 10.3 Agreement on Communications

Except in relation to Communications regulated by **clause 10.2** and to the extent permitted by applicable law, and subject to **clause 10.4**:

- (a) Cortona and Unity must in good faith consult with each other and agree in advance on all aspects (including the timing, form, content and manner) of:
  - (i) any Communications with any Governmental Agency; and
  - (ii) any press release,in relation to the conduct of the Transaction, whether or not such Communications are for the purposes of satisfying a Condition Precedent;
- (b) each of Cortona and Unity must ensure that any other Communications with third parties in relation to the Transaction (such as with employees, shareholders, contract counterparties or with the media other than by way of press release) must be in accordance with the communication protocols and messages agreed between the parties (and if branded with the name or logo of the other party, must be consented to by that party);
- (c) each party must provide copies to the other party of any written Communications sent to or received from a person referred to in **clause 10.3(b)** promptly upon despatch or receipt (as the case may be); and
- (d) each party will have the right to be present and make submissions at or in relation to any proposed meeting with any Governmental Agency in relation to the Transaction.

### 10.4 Competing or Superior Proposal

The requirements of **clauses 10.2(b), 10.2(c), 10.2(d)** and **10.3** do not apply to either party if a Competing Proposal or a Superior Proposal has been announced and publicly recommended, promoted or otherwise endorsed by any of the Cortona Board and has not been publicly withdrawn.

### 10.5 Termination of this document

If this document is terminated under **clause 11**, either party may disclose by way of announcement to ASX or any stock exchange on which securities of Unity are listed the fact that this document has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the announcement prior to its disclosure.

## 11 Termination

### 11.1 Termination by either party

A party may terminate this document before 5.00pm on the Business Day before the Second Court Date:

- (a) **resolution voted down:** if the resolution to approve the Scheme submitted to the Scheme Meeting is not approved by the requisite majorities of Cortona Shareholders (except in the circumstances contemplated by **clause 3.6**);
- (b) **End Date:** if the Effective Date for the Scheme has not occurred on or before the End Date;
- (c) **material breach:** if the other party is in material breach of any clause of this document, taken in the context of the Transaction as a whole, provided that either Cortona or Unity, as the case may be, has, if practicable given notice to the other setting out the relevant circumstances and stating an intention to terminate, and the relevant circumstances continue to exist five Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the time such notice is given;
- (d) **no Court orders:** if the party is entitled to terminate the document in accordance with **clause 5.6(a)**;
- (e) **restraint:** subject to prior compliance with **clause 5.6**, if any court, the Takeovers Panel or Governmental Agency has issued any order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Scheme, or has refused to do anything necessary to permit the Scheme, and the parties fail to agree on conducting on appeal within five Business Days;
- (f) **Conditions Precedent:** in the circumstances permitted in **clause 3.8**; or
- (g) **insolvency:** if an Insolvency Event has occurred in relation to Cortona or any member of the Cortona Group (in which case Unity may terminate) or Unity or any material member of Unity Group (in which case Cortona may terminate).

### 11.2 Termination by Unity

Unity may terminate this document at any time before the End Date by notice in writing to Cortona if at any time prior to 5.00pm on the day before the Second Court Date any Cortona Director changes their recommendation or ceases or fails to recommend to Cortona Shareholders that they vote in favour of the resolution to approve the Scheme, including any adverse modification to their recommendation, or otherwise make a public statement indicating that they no longer support the Scheme.

### 11.3 Exercise of termination right

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document.

### 11.4 Effect of termination

In the event of termination of this document by either Unity or Cortona pursuant to **clause 11.1** or **11.2**, this document will have no further force or effect and the parties will have no further obligations under this document, provided that:

- (a) this **clause 11** (Termination) and **clauses 1** (Interpretation), **5.6(a)** (Appeal process), **7** (Break fee), **10** (Confidentiality, public announcements and Communications), **12** (GST), **13** (Notices) and **14** (General) will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this document.

### 11.5 Damages

In addition to the right of termination under **clause 11.1(c)** where there is no appropriate remedy for the breach in the document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred as a result of the breach of the terms of this document.

## 12 GST

### 12.1 Construction

In this **clause 12**:

- (a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

### 12.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

### 12.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this document, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

#### **12.4 Timing of GST payment**

The recipient will pay the amount referred to in **clause 12.3** in addition to and at the same time that the consideration for the supply is to be provided under this document.

#### **12.5 Tax invoice**

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 12.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

#### **12.6 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a Supplier under this document, the amount payable by the recipient under **clause 12.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

#### **12.7 Reimbursements**

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

#### **12.8 No merger**

This **clause 12** does not merge in the completion or termination of this document or on the transfer of the property supplied under this document.

### **13 Notices**

#### **13.1 General**

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

#### **13.2 How to give a communication**

- (a) In addition to any other lawful means, a communication may be given by being:
  - (i) personally delivered;
  - (ii) left at the party's current address for notices;

- (iii) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
  - (iv) sent by fax to the party's current fax number for notices.
- (b) The parties will use all reasonable endeavours to provide a copy of any communication provided under **clause 13.2(a)** by email to the email address of the other party set out in **clause 13.3**. To avoid doubt, such email communication is provided as support for the official communication provided in accordance with **clause 13.2(a)** and does not supersede or replace any obligation on a party to provide that communication in accordance with **clause 13.2(a)** or derogate from the other provisions of this **clause 13**.

### **13.3 Particulars for delivery of notices**

- (a) The particulars for delivery of notices are initially:

#### **Unity**

Address: Level 10, 350 Collins Street, Melbourne VIC 3000

Fax: +61 3 8622 2399

Attention: Andrew McIlwain

copy to: Richard Lustig, Baker & McKenzie,  
Level 19, 181 William Street, Melbourne, VIC 3000

#### **Cortona**

Address: Level 5, 72 Kings Park Road, West Perth WA 6005

Fax: +61 8 9485 0706

Attention: Clive Jones

copy to: Russell Philip, Corrs Chambers Westgarth,  
Level 15, 240 St Georges Terrace, Perth, WA 6000

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

### **13.4 Communications by post**

Subject to **clause 13.6**, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

### **13.5 Communications by fax**

Subject to **clause 13.6**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### **13.6 After hours communications**

If a communication is given:

- (a) after 5.00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

### **13.7 Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 13** or in accordance with any applicable law.

## **14 General**

### **14.1 Duty**

- (a) Unity as between the parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by the other party) on or relating to this document, the Scheme, the Deed Poll, any document executed under any of these, or any dutiable transaction evidenced or effected by any of these.
- (b) If a party other than Unity pays any duty (including any fine, interest or penalty) on or relating to this document, the Scheme, the Deed Poll, any document executed under any of these, or any dutiable transaction evidenced or effected by any of these, Unity must pay that amount to the paying party on demand.

### **14.2 Legal costs**

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

### **14.3 Amendment**

This document may only be varied or replaced by a document executed by the parties.

### **14.4 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any Losses, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

- (c) Any waiver or consent given by any party under this document is only effective and binding on that party if it is given or confirmed in writing by that party and signed by both parties.

#### **14.5 Rights cumulative**

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

#### **14.6 Consents**

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

#### **14.7 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

#### **14.8 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

#### **14.9 Assignment**

- (a) A party must not assign or deal with any right under this document without the prior written consent of the other parties.
- (b) Any purported dealing in breach of this **clause 14.9** is of no effect.

#### **14.10 Liability**

An obligation of two or more persons binds them separately and together.

#### **14.11 Counterparts**

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

#### **14.12 Entire understanding**

- (a) This document and the Confidentiality Agreement contain the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.



- (c) No oral explanation or information provided by any party to another:
  - (i) affects the meaning or interpretation of this document; or
  - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

**14.13 Relationship of parties**

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

**14.14 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this document. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

# Schedule 1

## Conditions Precedent

Condition	Party entity to benefit	Party responsible
<p><b>1 NSW Ministerial approval</b></p> <p>Before 5.00pm on the day before the Second Court Date, the Minister administering the <i>Mining Act 1992</i> (NSW) gives his consent to the implementation of the Transaction, to the extent required under or in connection with the Cortona Permits.</p>	Both	Both
<p><b>2 No regulatory actions</b></p> <p>Between the date of this document and 5.00pm on the day before the Second Court Date (each inclusive):</p> <p>(a) there is not in effect any preliminary or final decision, order or decree issued by a Governmental Agency;</p> <p>(b) no action or investigation is announced, commenced or threatened by any Governmental Agency; and</p> <p>(c) no application is made to any Governmental Agency,</p> <p>in consequence of or in connection with the Transaction which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, the implementation of the Transaction or any part of it or the acquisition of Cortona Shares under the Scheme.</p>	Both	Both
<p><b>3 Court orders</b></p> <p>No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition being in effect at 5.00pm on the day before the Second Court Date which prevents the consummation of any aspect of the Transaction.</p>	Both	Both
<p><b>4 No Cortona Material Transactions</b></p> <p>No Cortona Material Transaction occurs between the date of this document and 5.00pm on the day before the Second Court Date.</p>	Unity	Cortona

<b>Condition</b>	<b>Party entity to benefit</b>	<b>Party responsible</b>
<p><b>5 No Unity Material Transactions</b></p> <p>No Unity Material Transaction occurs between the date of this document and 5.00pm on the day before the Second Court Date.</p>	Cortona	Unity
<p><b>6 No Cortona Material Adverse Change</b></p> <p>No Cortona Material Adverse Change occurs or becomes apparent between the date of this document and 5.00pm on the day before the Second Court Date.</p>	Unity	Cortona
<p><b>7 No Unity Material Adverse Change</b></p> <p>No Unity Material Adverse Change occurs or becomes apparent between the date of this document and 5.00pm on the day before the Second Court Date.</p>	Cortona	Unity
<p><b>8 Independent Expert recommendation</b></p> <p>The Independent Expert opines that the Scheme is in the best interests of Cortona Shareholders before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change its conclusions or withdraw its report prior to 5.00pm on the day before the Second Court Date.</p>	Cortona	Cortona
<p><b>9 Cortona Shareholder approval</b></p> <p>Cortona Shareholders approve the Scheme by the necessary majorities at the Scheme Meeting (or any adjournment or postponement thereof).</p>	Cannot be waived	Cortona
<p><b>10 Court approval of Scheme</b></p> <p>The Court approves the Scheme under section 411(4)(b) of the Corporations Act and an office copy of the Scheme Order is lodged with ASIC as contemplated by section 411(10) of the Corporations Act.</p>	Cannot be waived	Cortona

## Schedule 2

### Timetable

<b>Action</b>	<b>Date</b>
Announcement Date	Friday, 28 September 2012
Draft Scheme Booklet lodged with ASIC	Friday, 26 October 2012
Deed Poll executed by Unity	Monday, 12 November 2012
First Court Date	Monday, 12 November 2012
Scheme Booklet registered by ASIC and released on ASX	Monday, 12 November 2012
Scheme Booklet despatched to Cortona Shareholders	Monday, 19 November 2012
Scheme Meeting	Wednesday, 19 December 2012
Second Court Date	Monday, 7 January 2013
Effective Date: Scheme Order lodged with ASIC	Monday, 7 January 2013
Record Date	Monday, 14 January 2013
Implementation Date	Monday, 21 January 2013

## Schedule 3

### Cortona's Obligations

- 1 **Cortona Information:** ensure that the Cortona Information included in the Scheme Booklet complies with the Corporations Act, the Corporations Regulations, the ASX Listing Rules and ASIC Regulatory Guide 60 and is not false, misleading or deceptive in any material respect (including because of any material omission).
- 2 **Further Cortona Information:** provide to Unity and Cortona Shareholders such further or new Cortona Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Cortona Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **Independent Expert:** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's report for the Scheme Booklet.
- 4 **Provide a copy of the Independent Expert's report:** as soon as reasonably practicable, provide Unity with a copy of all drafts of the Independent Expert's report received by Cortona from the Independent Expert from time to time for review for factual accuracy.
- 5 **Promote merits of Transaction:** participate in and ensure that the Cortona Board participates in efforts reasonably requested by Unity to promote the merits of the Transaction, including meeting with key Cortona Shareholders at the reasonable request of Unity, unless and until the recommendations of the Cortona Directors are withdrawn or modified because of a Superior Proposal or because the Independent Expert concludes that the Scheme is not in the best interests of Cortona Shareholders.
- 6 **Directors' recommendation:** state in the Scheme Booklet and the Announcement (on the basis of statements made to Cortona by each of the Cortona Directors) that each of the Cortona Directors recommend to Scheme Participants that the Scheme be approved in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interest of the Cortona Shareholders.
- 7 **Directors' voting:** use its best endeavours to procure that:
- (a) each Cortona Director votes any Cortona Shares in which they have a relevant interest in favour of the Scheme and any other resolution

submitted to Cortona Shareholders for their approval in connection with the Scheme; and

- (b) each Cortona Director does not change that voting intention, or make any public statement or take any action which qualified their support for the Scheme or contradicts, or subsequently changes or withdraws or modifies the recommendation in favour of the Scheme,

unless the Cortona Directors' recommendation is withdrawn or modified.

- 8 **Section 411(17)(b) statement:** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- 9 **Court application and representation:** apply to the Court for an order under section 411(1) of the Corporations Act directing Cortona to convene the Scheme Meeting and engage suitable senior counsel to represent Cortona in all Court proceedings related to the Scheme and consult with Unity in relation to the content of the document required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and take into account all reasonable comments provided for and on behalf of Unity in relation to such documents.
- 10 **Registration of explanatory statement:** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act.
- 11 **Send Scheme Booklet:** send the Scheme Booklet to Scheme Participants as soon as practicable after the Court orders Cortona to convene the Scheme Meeting.
- 12 **Scheme Meeting:** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of Scheme Participants for the Scheme.
- 13 **Court order:** apply to the Court for the Scheme Order.
- 14 **Lodge:** lodge with ASIC an office copy of any such Court order approving the Scheme as approved by the Cortona Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act.
- 15 **Register information:** close the Register as at 5.00pm on the Record Date.
- 16 **Registration:** register all transfers of Scheme Shares to Unity or its nominee on the Implementation Date.
- 17 **Listing:** take all reasonable steps to maintain Cortona's listing on ASX, notwithstanding any suspension of the quotation of Cortona Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.
- 18 **Compliance with laws:** use its best endeavours to do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.

- 19 **Other steps:** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme including lodging all necessary documents and filing.

# Schedule 4

## Unity's Obligations

- 1 **Unity Information:** prepare and promptly provide to Cortona for inclusion in the Scheme Booklet such Unity Information as Cortona reasonably requires to prepare and issue the Scheme Booklet (including any information required under the Corporations Act, the Corporations Regulations, the Listing Rules or ASIC Regulatory Guide 60) and ensure that the Unity Information contained in the Scheme Booklet is not false, misleading or deceptive in any material respect (including because of any material omission).
- 2 **Further Unity Information:** promptly provide to Cortona such further or new Unity Information as may arise after the Scheme Booklet has been sent until the date of the Scheme Meeting as may be necessary to ensure that the Unity Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission).
- 3 **Independent Expert information:** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's report to be included in the Scheme Booklet.
- 4 **Representation:** procure that it is represented by counsel at the court hearings convened for the purposes of seeking the Scheme Order, at which, through its counsel Unity must 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 document and the Scheme.
- 5 **Deed Poll:** prior to the Scheme Booklet being sent to Cortona Shareholders, sign and deliver the Deed Poll.
- 6 **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Cortona Shares as contemplated by **clause 4.2** and the Scheme.
- 7 **Consideration:** if the Scheme becomes Effective, procure the payment of the Scheme Consideration to Cortona in the manner and amount contemplated by **clause 4.2** and the Deed Poll.
- 8 **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction.
- 9 **Other steps:** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.



## Schedule 5

### Cortona's Representations and Warranties

- 1     **Incorporation:** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2     **Execution:** the execution and delivery of this document has been properly authorised by all necessary corporate action of Cortona.
- 3     **Corporate power:** it has full corporate power and lawful authority to execute and deliver this document and to consummate and perform or cause to be performed its obligations under this document in accordance with its terms.
- 4     **Binding obligations:** (subject to laws generally affecting creditors' rights and the principles of equity) this document constitutes legal, valid and binding obligations on it.
- 5     **Disclosure:** Cortona has provided to Unity all information requested in writing by Unity in connection with the Transaction and actually known to the Cortona Directors as at the date of this document and has not knowingly withheld any information from Unity because Cortona believed that the provision of that information would affect Unity's willingness to enter into this document.
- 6     **Cortona Information:** the Cortona Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASX Listing Rules and ASIC Regulatory Guide 60.
- 7     **Information:** to the best of the knowledge of each Cortona Director as at the date of this document, all Cortona Disclosure Materials were prepared in good faith with due care, skill and diligence, are true and accurate in all material respects (when considered in aggregate) as at the date of this document, and are not misleading in any material respect (including by omission).
- 8     **Reliance:** the Cortona Information contained in the Scheme Booklet will be included in good faith and on the understanding that Unity and its directors will rely on that information for the purposes of considering and approving the Unity Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
- 9     **Further information:** Cortona will, as a continuing obligation, provide to Unity all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of **item 7** of this **schedule** if it applied as at the date upon which that information arose.

- 10 **Periodic disclosure:** the periodic financial disclosures made by Cortona in its annual financial report and half-yearly financial report were not misleading or deceptive when made and are prepared in accordance with the Corporations Act and with all relevant Accounting Standards and give a true and fair view of the financial position and performance of the Cortona Group as at the date they were made.
- 11 **Continuous disclosure:** Cortona is not in breach of its continuous disclosure obligations under the Corporations Act and the ASX Listing Rules and is not relying on the carve-outs in Listing Rule 3.1A to withhold any information from disclosure.
- 12 **Provision of information to Independent Expert:** all information provided by or on behalf of Cortona to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing an Independent Expert's report.
- 13 **No litigation:**
- (a) no actions, suits, arbitrations or legal proceedings which, in any such case, may result in a judgment, fine or other penalty of \$100,000 or more is pending or, so far as Cortona is aware after due enquiry, threatened against Cortona or any of its subsidiaries;
  - (b) neither Cortona nor any of its subsidiaries is the subject of any material pending or, so far as Cortona is aware after making due enquiries, material threatened investigation by a Governmental Agency;
  - (c) neither Cortona nor any of its subsidiaries nor the respective assets, properties or business of Cortona or any of its subsidiaries is subject to any judgment, order, writ, forfeiture application, injunction or decree of any court, Governmental Agency or arbitration tribunal; and
  - (d) there is no agreement, judgment, injunction, order or decree binding on Cortona or any of its subsidiaries that has or would reasonably be likely to have the effect of prohibiting, restricting or materially impairing any business of Cortona or any of its subsidiaries.
- 14 **Compliance:** as at the date of this document and to the best of the knowledge of each Cortona Director, Cortona and its subsidiaries have complied in all material respects with all laws applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
- 15 **Insolvency:** no member of the Cortona Group is subject to an Insolvency Event (other than a member of the Cortona Group currently in liquidation).
- 16 **Securities:** Cortona's issued securities as at the date of this document are 268,048,097 fully-paid ordinary shares quoted on ASX, and the Cortona Group has not issued, or agreed to issue, any other securities or instruments which

are still in force and may convert into Cortona Shares or any other securities in Cortona other than 9,250,000 Cortona Options.

- 17 **No Encumbrance:** there is no Encumbrance over any of its assets or revenues, other than as publicly released to ASX or in the ordinary course of business.
- 18 **Cortona Material Permits:**
- (a) Cortona Group is the sole unencumbered legal and beneficial owner of the Cortona Material Permits and other than as disclosed to Unity there are no royalties payable to any third party (other than a Governmental Agency) in respect of future production from the Cortona Material Permits.
  - (b) Cortona Group is not in default in the due and punctual observance and performance of its obligations under the provisions of the Cortona Material Permits.
  - (c) the Cortona Material Permits are valid, subsisting, in full force and effect, and in good standing in terms of the *Mining Act 1992* (NSW).
  - (d) so far as Cortona is aware, having made all reasonable enquiries, Cortona Group has:
    - (i) complied in all material respects with all laws and regulations applicable to the Cortona Material Permits (including, without limitation, laws and regulations relating to the environment) and with all orders of Governmental Agencies having jurisdiction over the Cortona Material Permits; and
    - (ii) as at the date of this document, all material licenses, permits and approvals (including all necessary land access permissions and arrangements) necessary for it to conduct its present operations on the Cortona Material Permits and its proposed future development of the Dargues Reef project taking into account the stage of the development of the Dargues Reef project, where failure to obtain such licenses, permits and approvals may reasonably be expected to have a material adverse effect on the development of that mine.
  - (e) so far as Cortona is aware, having made all reasonable enquiries, Cortona Group has not received any notice or information regarding any circumstances that would result in a material breach of the terms and conditions of the Cortona Material Permits or any application for renewal not being granted.
  - (f) all fees, charges, penalties, fines and royalties in respect of the Cortona Material Permits which have fallen due for payment have been paid and all renewal applications submitted on time and in accordance with the *Mining Act 1992* (NSW).

## Schedule 6

### Unity's Representations and Warranties

- 1     **Incorporation:** it is a valid existing corporation registered under the laws of its place of incorporation.
- 2     **Execution:** the execution and delivery of this document has been properly authorised by all necessary corporate action of Unity.
- 3     **Corporate power:** it has full corporate power and lawful authority to execute and deliver this document and to consummate and perform or cause to be performed its obligations under this document in accordance with its terms.
- 4     **Binding obligations:** (subject to laws generally affecting creditors' rights and the principles of equity) this document constitutes legal, valid and binding obligations on it.
- 5     **Disclosure:** Unity has provided to Cortona all information requested in writing by Cortona in connection with the Transaction and actually known to the Unity Directors as at the date of this document and has not knowingly withheld any information from Cortona because Unity believed that the provision of that information would affect Cortona's willingness to enter into this document.
- 6     **Unity Information:** the Unity Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASX Listing Rules and ASIC Regulatory Guide 60.
- 7     **Information:** to the best of the knowledge of each Unity Director as at the date of this document, all Unity Disclosure Materials were prepared in good faith with due care, skill and diligence, are true and accurate in all material respects (when considered in aggregate) as at the date of this document, and are not misleading in any material respect (including by omission).
- 8     **Reliance:** the Unity Information contained in the Scheme Booklet will be included in good faith and on the understanding that Cortona and its directors will rely on that information for the purposes of considering and approving the Cortona Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.
- 9     **Further information:** Unity will, as a continuing obligation, provide to Cortona all such further or new information which may arise after the date of the Scheme Booklet until the date of the Scheme Meeting which may be necessary to ensure that there would be no breach of **item 7** of this **schedule** if it applied as at the date upon which that information arose.

- 10 **Periodic disclosure:** the periodic financial disclosures made by Unity in its annual financial report and half-yearly financial report were not misleading or deceptive when made and are prepared in accordance with the Corporations Act and with all relevant Accounting Standards and give a true and fair view of the financial position and performance of the Unity Group as at the date they were made.
- 11 **Continuous disclosure:** Unity is not in breach of its continuous disclosure obligations under the Corporations Act and the ASX Listing Rules and is not relying on the carve-outs in ASX Listing Rule 3.1A to withhold any information from disclosure.
- 12 **Provision of information to Independent Expert:** all information provided by or on behalf of Unity to the Independent Expert to enable the Independent Expert's report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing an Independent Expert's report.
- 13 **No litigation:**
- (a) no actions, suits, arbitrations or legal proceedings which, in any such case, may result in a judgment, fine or other penalty of \$100,000 or more is pending or, so far as Unity is aware after due enquiry, threatened against Unity or any of its subsidiaries;
  - (b) neither Unity nor any of its subsidiaries is the subject of any material pending or, so far as Unity is aware after making due enquiries, material threatened investigation by a Governmental Agency;
  - (c) neither Unity nor any of its subsidiaries nor the respective assets, properties or business of Unity or any of its subsidiaries is subject to any judgment, order, writ, forfeiture application, injunction or decree of any court, Governmental Agency or arbitration tribunal; and
  - (d) there is no agreement, judgment, injunction, order or decree binding on Unity or any of its subsidiaries that has or would reasonably be likely to have the effect of prohibiting, restricting or materially impairing any business of Unity or any of its subsidiaries.
- 14 **Compliance:** as at the date of this document and to the best of the knowledge of each Unity Director, Unity and its subsidiaries have complied in all material respects with all laws applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted.
- 15 **Insolvency:** no member of the Unity Group is subject to an Insolvency Event (other than a member of the Unity Group currently in liquidation).
- 16 **Securities:** Unity's issued securities as at the date of this document are 505,250,467 fully-paid ordinary shares quoted on ASX, and the Unity Group has not issued, or agreed to issue, any other securities or instruments which are still in force and may convert into Unity Shares or any other securities in

Unity other than 31,004 options each conferring a right to subscribe for one Unity Share.

- 17 **No Encumbrance:** there is no Encumbrance over any of its assets or revenues, other than as publicly released to ASX or in the ordinary course of business.
- 18 **Unity Material Permits:**
- (a) Unity Group is the sole unencumbered legal and beneficial owner of the Unity Material Permits and other than as disclosed to Cortona there are no royalties payable to any third party (other than a Governmental Agency) in respect of current or future production from the Unity Material Permits.
  - (b) Unity Group is not in default in the due and punctual observance and performance of its obligations under the provisions of the Unity Material Permits.
  - (c) the Unity Material Permits are valid, subsisting, in full force and effect, and in good standing in terms of the *Mineral Resources (Sustainable Development) Act 1990 (Vic)* or *Mineral Resources Development Act 1995 (Tas)* (as applicable).
  - (d) so far as Unity is aware, having made all reasonable enquiries, Unity Group has complied in all material respects with all laws and regulations applicable to the Unity Material Permits (including, without limitation, laws and regulations relating to the environment) and with all orders of Governmental Agencies having jurisdiction over the Unity Material Permits and has all material licenses, permits and approvals necessary for it to conduct its present operations on the Unity Material Permits.
  - (e) so far as Unity is aware, having made all reasonable enquiries, Unity Group has not received any notice or information regarding any circumstances that would result in a material breach of the terms and conditions of the Unity Material Permits or any application for renewal not being granted.
  - (f) all fees, charges, penalties, fines and royalties in respect of the Unity Material Permits which have fallen due for payment have been paid and all renewal applications submitted on time and in accordance with the *Mineral Resources (Sustainable Development) Act 1990 (Vic)* or *Mineral Resources Development Act 1995 (Tas)* (as applicable).

DATED: 27 SEPTEMBER 2012

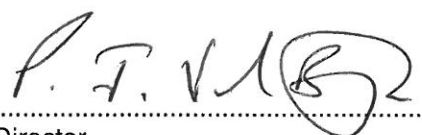
## Execution

**Executed** as an agreement.

**Executed by Cortona Resources Limited** )

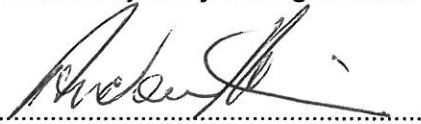
  
.....  
Company Secretary/Director

CLIVE JONES  
.....  
Name of Company Secretary/Director  
(print)

  
.....  
Director

PETER VAN DER BORCH  
.....  
Name of Director (print)

**Executed by Unity Mining Limited** )

  
.....  
Company Secretary/Director

ANDREW MCEWAN  
.....  
Name of Company Secretary/Director  
(print)

  
.....  
Director

DAVID MEORUM RANSOM  
.....  
Name of Director (print)

For personal use only

## Annexure A

### Scheme



For personal use only

## Annexure B

### Deed Poll