



# Kingsgate

Consolidated Limited

ABN 42 000 837 472



# Dominion Mining Limited

ABN 37 000 660 864

20 October 2010

**Via ASX online  
(6 pages)**

The Manager  
Company Announcement Office  
Australian Securities Exchange

Dear Sir/Madam,

## **KINGSGATE AND DOMINION ANNOUNCE AGREED TRANSACTION**

Kingsgate Consolidated Limited (ASX:KCN) ("Kingsgate") and Dominion Mining Limited (ASX:DOM) ("Dominion") are pleased to announce that they have signed a Scheme Implementation Agreement ("SIA") under which it is proposed Kingsgate will acquire all of the issued and outstanding shares in Dominion under a Scheme of Arrangement ("Scheme"). The transaction has been unanimously recommended by Dominion's Board of Directors who will vote the shares they control in favour of the transaction.<sup>1</sup>

Consideration for the transaction will be Kingsgate shares, with Dominion shareholders offered 0.31 Kingsgate shares for each Dominion share ("Offer") they own. The transaction values Dominion at \$3.63 per share, or approximately A\$376 million<sup>2</sup>.

### **Transaction Highlights:**

- **Consolidates Kingsgate's position as a preferred exposure amongst mid-tier ASX gold producers, with an implied market capitalisation post-transaction of approximately A\$1.6 billion<sup>3</sup>**
- **Provides a strong operational and financial platform for Kingsgate to continue to deliver a superior growth profile for shareholders**
- **Combined operations with the potential to produce up to 300,000 ounces p.a. of gold following commissioning of the Chatree plant expansion from a reserve / resource base of 2.4 million ounces and 5.3 million ounces respectively<sup>4</sup>**

<sup>1</sup> In the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders

<sup>2</sup> Based on the closing price of Kingsgate shares on 19 October 2010 of \$11.71

<sup>3</sup> Based on the closing price of Kingsgate shares on 19 October 2010 of \$11.71 and Kingsgate's offer of 0.31 Kingsgate shares for each Dominion share

<sup>4</sup> Refer Appendix

- **Combines complementary technical capabilities to create a strong operational team capable of maximising value from the respective companies' operating and exploration assets**
- **Provides Dominion shareholders with operational and growth diversification through exposure to Kingsgate's prospective Chatree operations and broader exploration projects in Thailand and offers enhanced access to capital to develop Dominion's exploration portfolio**
- **Provides Kingsgate shareholders with geopolitical and operational diversification through exposure to Dominion's Challenger project and exploration assets in Australia**

The exchange ratio of 0.31 Kingsgate shares for each Dominion share represents an attractive premium for Dominion shareholders. The implied offer price of \$3.63 per share represents:

- a 33.0% premium to the closing price of \$2.73 per Dominion Share on ASX on the last trading day before the Announcement Date;
- a 27.9% premium to the five day volume weighted average price of \$2.84 per Dominion Share on ASX on the last trading day before the Announcement Date; and
- a 34.7% premium to the 30 day volume weighted average price of \$2.69 per Dominion Share on ASX on the last trading day before the Announcement Date.

Dominion's Board of directors unanimously recommends that Dominion shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders. Each Dominion director intends to vote all of the Dominion shares in which they have a relevant interest and in respect of which they have the power to vote in favour of the Scheme (in the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders).

After completion of the transaction, current Kingsgate shareholders will own approximately 76% of Kingsgate following implementation of the Scheme and current Dominion shareholders will own approximately 24%. It is proposed that Peter Alexander, a current Dominion non-executive director, will join the Board of Kingsgate, while Peter Joseph, Dominion's Chairman will be retained as an Adviser to the Kingsgate Board.

Commenting on the transaction, Kingsgate Chairman, Ross Smyth-Kirk, said "This is an important step in Kingsgate's strategy to consolidate its position as the ASX's premier mid-tier gold producer. Dominion will provide Kingsgate with immediate access to additional production and cashflow and also provide geographic and operational diversification. From this enlarged operational and financial platform, Kingsgate will continue to seek out growth opportunities from which to further create value for its shareholders."

Dominion Chairman, Peter Joseph, said "The Dominion Board recognises the strong strategic logic in a combination of the two organisations which will provide enhanced growth opportunities for all shareholders. Dominion shareholders will receive an attractive premium and, by receiving Kingsgate shares, will be able to participate in the benefits created by the combination of the two companies. We are pleased to recommend this transaction to our shareholders for their consideration".

## **Implementation**

Kingsgate has entered into a Scheme Implementation Agreement with Dominion under which Dominion has agreed to a proposed Scheme between Dominion and its shareholders for the acquisition of its shares by Kingsgate. A copy of the SIA is attached to this announcement.

The transaction is subject to a number of conditions, including receipt of required regulatory and court approvals, along with the approval of Dominion shareholders. Regulatory approvals include approval from the Australian Foreign Investment Review Board ("FIRB").

The SIA also contains customary deal protection mechanisms, including no shop and no talk provisions, a matching right for Kingsgate in the event of a competing proposal and a mutual break fee of A\$3.75 million payable in certain circumstances.

Kingsgate also proposes to acquire all outstanding Dominion employee options via an options Scheme of Arrangement.

### **Next Steps**

In due course, Dominion shareholders will receive a Scheme Booklet that will contain full details of the proposed Scheme, including the basis for the Dominion Board's recommendation that shareholders approve the proposed Scheme.<sup>5</sup> Dominion will shortly appoint an independent expert to deliver a report on whether the proposed Scheme is in the best interests of Dominion's shareholders. The independent expert's report will be included in the Scheme Booklet.

It is anticipated that Dominion will send the Scheme Booklet to shareholders in December. A meeting of Dominion's shareholders to approve the Scheme is expected to be held in late January 2011, with the Scheme expected to be implemented by early February.

### **Advisers for the Transaction**

Kingsgate's financial adviser is Macquarie Capital Advisers and its legal adviser is Clayton Utz.

Dominion's financial adviser is Goldman Sachs and its legal adviser is Johnson Winter & Slattery.

### **Conference Call**

Kingsgate and Dominion will hold a conference call Wednesday, 20 October 2010 to discuss the transaction at 4:00 p.m. AEST. Participants may dial in to the call on +61 2 8113 1400 or 1800 554 798 toll free in Australia and entering the Participant Pin Code 6905183#.

The transaction presentation is available on both companies' websites. A copy is also available on the ASX website. The webcasts will be available for replay in due course. For further information on Kingsgate, please visit [www.kingsgate.com.au](http://www.kingsgate.com.au). For further information on Dominion, please visit [www.dml.com.au](http://www.dml.com.au).

### **About Kingsgate**

Kingsgate Consolidated Limited (Kingsgate) is a low cost gold producer and a highly successful gold mining and exploration company, traded on the Australian Stock Exchange (KCN: ASX). The company owns and operates the Chatree gold mine in central Thailand through its Thai subsidiary, Akara Mining Limited, using world's best practice for safe, environmental and socially responsible operations.

A growing reserve/resource position within granted mining leases lies in a gold province which exhibits world class potential, with recent near mine gold discoveries.

### **About Dominion**

Dominion Mining Limited is an Australian gold producer and explorer whose principal asset is the Challenger Gold Project in South Australia which has been in production since 2002 initially as an open cut mine and in the past five years as an underground operation. Dominion has recently completed an expansion at the Challenger mine which is forecast to produce in excess of 100,000

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<sup>5</sup> In the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders

ounces in the current financial year. Dominion also has an extensive exploration portfolio in Western Australia and South Australia and has recently applied for exploration licences in the Peoples Democratic Republic of Laos.

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## Appendix

### Chatree Reserves and Resources

Chatree Ore Reserves as at 30 June 2010 (>0.4g/t gold cut-off grade)						
Source	Category	Tonnes	Gold Grade	Silver Grade	Gold Contained	Silver Contained
		(millions)	(g/t)	(g/t)	(million ounces)	(million ounces)
From Pits	Proved	37.4	1.00	9.5	1.20	11.42
	Probable	18.7	0.98	8.4	0.59	5.02
Stockpiles		5.6	0.79	12.1	0.14	2.19
Chatree Total	Total	61.7	0.97	9.4	1.93	18.63

Chatree Mineral Resources Inclusive of Ore Reserves as at 30 June 2010 (>0.3g/t gold cut-off grade)						
Source	Category	Tonnes	Gold Grade	Silver Grade	Gold Contained	Silver Contained
		(millions)	(g/t)	(g/t)	(million ounces)	(million ounces)
From Pits	Measured	79.8	0.81	7.4	2.07	18.85
	Indicated	56.7	0.76	6.1	1.39	11.07
	Inferred	31.4	0.71	4.8	0.72	4.86
Stockpiles		5.6	0.79	12.1	0.14	2.19
Chatree Total	Total	173.5	0.77	6.6	4.32	36.97

#### Competent Person Statement:

Information in this document relates to Exploration Results, Mineral Resource and Ore Reserve estimates based on information compiled by the following Competent Persons: Ron James, Fiona Davidson, Guy Davies and Suphanit Suphananthi who are employees of the Kingsgate Group and members of The Australasian Institute of Mining and Metallurgy and Rob Spiers who is an employee of Hellman & Schofield Pty Ltd and member of The Australian Institute of Geoscientists. These people qualify as Competent Persons as defined in the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the JORC Code, 2004 edition) and possess relevant experience in relation to the mineralisation being reported herein as Exploration Results, Mineral Resources and Ore Reserves. Each Competent Person has consented to the Public Reporting of these statements and the inclusion of the material in the form and context in which it appears.

## Challenger Reserves and Resources

Challenger Ore Reserves as at 30 June 2010				
Source	Category	Tonnes	Gold Grade	Gold Contained
		(thousands)	(g/t)	(thousand ounces)
From Mine	Proved	318	5.8	59
	Probable	1,834	6.0	352
Stockpiles		157	2.1	9
<b>Challenger Total</b>	<b>Total</b>	<b>2,310</b>	<b>5.7</b>	<b>420</b>

Challenger Mineral Resources as at 30 June 2010				
Source	Category	Tonnes	Gold Grade	Gold Contained
		(thousands)	(g/t)	(thousand ounces)
From Mine	Measured	310	6.3	63
	Indicated	2,232	6.4	460
	Inferred	1,672	7.8	418
Stockpiles		157	1.8	8
<b>Challenger Total</b>	<b>Total</b>	<b>4,371</b>	<b>6.8</b>	<b>950</b>

### **Competent Person Statement:**

The information in this document that relates to Exploration Results, Mineral Resources or Ore Reserves is based on information compiled by Peter Bamford, Tony Poustie and Paul Androvic who are full-time employees of the Company, members of the Australasian Institute of Mining and Metallurgy. Peter Bamford, Tony Poustie and Paul Androvic have sufficient experience, which is relevant to the style of mineralisation and type of deposit under consideration and to the activity, which they are undertaking to qualify as Competent Persons as defined in the 2004 Edition of the 'Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves'. Peter Bamford, Tony Poustie and Paul Androvic, consent to the inclusion in the report of the matters based on their information in the form and context in which it appears.

CLAYTON UTZ

## Scheme implementation agreement

Dominion Mining Ltd  
Target

Kingsgate Consolidated Limited  
Bidder

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## Scheme implementation agreement dated 20 October 2010

**Parties**                    **Dominion Mining Ltd ABN 37 000 660 864** of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**)

**Kingsgate Consolidated Limited ABN 42 000 837 472** of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia (**Bidder**)

### Background

- A.        The Bidder proposes to acquire all of the Target Shares for the Share Scheme Consideration pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act.
- B.        The Target proposes to cancel all of the Target Options pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act.
- C.        The Target has agreed to propose the Schemes and issue the Explanatory Memorandums at the request of the Bidder, and the Target and the Bidder have agreed to implement the Schemes on and subject to the terms and conditions of this agreement.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this agreement:

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

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

**ASX** means, as the context requires, ASX Limited ABN 98 008 624 691 or the securities market conducted by ASX Limited.

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

**Bidder Disclosure Letter** means the letter from the Bidder to the Target entitled "Bidder Disclosure Letter", dated the same date as this agreement and countersigned by the Target.

**Bidder Group** means the Bidder and each Related Entity of the Bidder.

**Bidder Indemnified Parties** means the Bidder, its Related Entities and each of their respective Representatives.

**Bidder Information** means all information regarding the Bidder and its Related Entities and the Share Scheme Consideration or the Option Scheme Consideration that is required by the Corporations Act, Listing Rules and the Policy Statements to be included in the Explanatory Memorandums including all the information that would be required under sections 636(1)(c), (g), (h), (i), (k)(ii), (l) and (m) of the Corporations Act to be included in a bidder's statement if the Bidder were offering the Share Scheme Consideration and Option Scheme Consideration as consideration under a takeover bid, and for the avoidance of doubt does not include the Target Information, the Independent Expert's Report and any investigating accountant's report.

**Bidder Material Adverse Change** means any event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters, has had or is reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Bidder Group, taken as a whole; or
- (b) the effect of a diminution in the:
- (i) consolidated net assets of the Bidder Group (calculated on the basis of AIFRS as at the date of this agreement) of at least \$50 million compared to the consolidated net assets of the Bidder Group as at 30 June 2010; or
  - (ii) consolidated earnings before interest, tax, depreciation and amortisation excluding significant non-cash items (calculated on the basis of AIFRS as at the date of this agreement) in any financial year of the Bidder after the one ended 30 June 2010, taken as a whole, of at least \$20 million,

other than an event, occurrence or matter:

- (c) that is or arises from:
- (i) changes in world gold prices or exchange rates;
  - (ii) general changes in economic, political or business conditions; or
  - (iii) changes in law, regulation or policy of any Regulatory Authority which impacts the Bidder Group's operations,

in each case, which impacts producers of gold in a similar manner, but excluding for the avoidance of doubt changes in law, regulation or policy of any Regulatory Authority which are directed at the Bidder Group's existing operations or which changes affect the Bidder Group disproportionately more than other global gold producing entities, including but not limited to the Target;

- (d) reasonably attributable to the execution of the Transaction Documents or the announcement of the Schemes and the completion of the transactions contemplated by them; or
- (e) fairly disclosed in the Bidder Disclosure Letter or in any announcement made by Bidder to ASX prior to the parties entering into this agreement.

**Bidder Prescribed Occurrence** means any of the occurrences set out in Schedule 4, other than:

- (a) as required to be done by the Bidder under the Transaction Documents;
- (b) as approved by the Target in writing (prior to the occurrence); or
- (c) as fairly disclosed in the Bidder Disclosure Letter or in any announcement made by the Bidder to ASX prior to the parties entering into this agreement.

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

**Bidder Tenements** means the mining tenements listed in the Bidder Disclosure Letter.

**Bidder Warranties** means the warranties set out in Schedule 5.

**Break Fee** means \$3.75 million.

**Business** means the business conducted by the Target Group.

**Business Day** means a business day as defined in the Listing Rules.

**Claim** means any claim, demand or cause of action whether arising in contract, tort, under statute or otherwise in relation to:

- (a) any provision of a Transaction Document;
- (b) the Target Shares or their acquisition by the Bidder;
- (c) the Target Options or their cancellation; or
- (d) any matter connected with any member of the Target Group.

**Competing Proposal** means a proposed transaction or arrangement pursuant to which a person other than the Bidder or any of its Related Entities would, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of, the Business;
- (b) acquire a Relevant Interest in, or enter into any agreement connected with or relating to the acquisition of a Relevant Interest in, 20% or more of Target Shares or otherwise acquire Control of the Target or the Target Group; or
- (c) otherwise acquire or merge with the Target whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or any other transaction or arrangement.

**Condition** means each condition specified in clause 3.1.

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

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

**Counterproposal** has the meaning given in clause 9.7.

**Court** means a court of competent jurisdiction determined by the Target with the approval of the Bidder (not to be unreasonably withheld).

**Disclosure Letter** means the letter from the Target to the Bidder entitled "Disclosure Letter", dated the same date as this agreement and countersigned by the Bidder.

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

**Effective Date** means the date on which the Schemes become Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**End Date** means the date which is 6 months after the date of this agreement.

**Explanatory Memorandums** means the Share Explanatory Memorandum and the Option Explanatory Memorandum.

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

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

**First Court Date** means the first day of hearing of an application made to the Court for an orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meetings or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**GST** has the meaning given in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Guarantee** means any guarantee, bond, security deposit, letter of credit or suretyship or any other obligation to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of, to indemnify against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of, obligation of, liability of or the insolvency of any other person.

**Implementation Date** means the date which is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

**Indemnified Losses** means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

**Ineligible Foreign Optionholder** means a Scheme Optionholder whose address shown in the Target Option Register on the Record Date is a place outside Australia and its external territories unless the Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Optionholder with New Bidder Shares when the Option Scheme becomes Effective.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address shown in the Target Share Register on the Record Date is a place outside Australia and its external territories unless the Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Shareholder with New Bidder Shares when the Share Scheme becomes Effective.

**Independent Expert** means the independent expert to be engaged by the Target to express an opinion as to whether:

- (a) the Share Scheme is in the best interests of the Target Shareholders; and
- (b) the Option Scheme is in the best interests of Target Optionholders.

**Independent Expert's Report** means the report from the Independent Expert in respect of the Schemes.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a person:

- (a) an application is made to court (unless it is frivolous or struck out or withdrawn within 3 Business Days) or a resolution is passed or an order is made for the winding up or dissolution of the person;
- (b) the person proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
- (c) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer is appointed in respect of the person or any of its assets;
- (d) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in paragraphs (a) to (c) in relation to the person.

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

**New Bidder Share** means a Bidder Share to be provided to:

- (a) Scheme Shareholders under the Share Scheme; and
- (b) Scheme Optionholders under the Option Scheme.

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

**Option Deed Poll** means a deed poll to be executed by the Bidder in favour of the Scheme Optionholders, substantially in the form set out in Annexure D or in such other form as the Target and the Bidder agree in writing.

**Option Explanatory Memorandum** means the explanatory memorandum to be prepared by the Target in respect of the Option Scheme in accordance with the terms of this agreement and to be dispatched to the Target Optionholders.

**Option Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Optionholders substantially in the form set out in Annexure B or in such other form as the Target and the Bidder agree in writing.

**Option Scheme Consideration** means the amount determined in accordance with Schedule 6.

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

**Policy Statements** means all policy statements and practice notes published by ASIC and in force at the date of this agreement.

**Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date or such other time and date (after the Effective Date) as the Bidder and the Target agree in writing.

**Regulator's Draft** means the draft of the Explanatory Memorandums which is provided to ASIC pursuant to section 411(2) of the Corporations Act.

**Regulatory Authority** means:

- (a) any government or local authority and any department, minister or agency of any government; and



- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Regulatory Conditions** means the Conditions set out in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d).

**Regulatory Review Period** means the period from the date on which the Target provides a draft of the Explanatory Memorandums to ASIC in accordance with clause 5.2(h) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Schemes, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meetings to consider the Schemes are heard.

**Related Entity** of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
- (b) a trustee of any unit trust in relation to which that corporation, or a corporation referred to in paragraph (a), directly or indirectly:
- (i) controls the right to appoint the trustee;
  - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
  - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Representatives** means, in relation to a party, all officers, employees, professional advisers and agents of the party or of its Related Entities.

**Required Consultation Period** means the period commencing at the time both parties become aware that clause 3.9(a) or 3.9(b) (as applicable) is triggered and ending on the earlier of:

- (a) the end of the day that is 5 Business Days after both parties become so aware; and
- (b) 8.00 am on the Second Court Date.

**Rival Bidder** has the meaning given to the term in clause 9.5.

**Sale Agent** means a person appointed by the Bidder to sell the New Bidder Shares that are attributable to Ineligible Foreign Shareholders and Ineligible Foreign Optionholders under the Schemes.

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

**Scheme Option** means a Target Option on issue on the Record Date.

**Scheme Optionholder** means each person who holds Scheme Options.

**Scheme Share** means a Target Share on issue on the Record Date.

**Scheme Shareholder** means each person who holds Scheme Shares.

**Schemes** means the Share Scheme and the Option Scheme.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Schemes or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Share Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as the Target and the Bidder agree in writing.

**Share Scheme Consideration** means 0.31 New Bidder Shares for each Scheme Share.

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

**Share Deed Poll** means a deed poll to be executed by the Bidder in favour of the Scheme Shareholders, substantially in the form set out in Annexure C or in such other form as the Target and the Bidder agree in writing.

**Share Explanatory Memorandum** means the explanatory memorandum to be prepared by the Target in respect of the Share Scheme in accordance with the terms of this agreement and to be dispatched to the Target Shareholders.

**Standard Rate** in relation to interest payable on any payment due under this agreement means the rate which is the 90 day Bank Bill Swap Reference Rate (Average Bid) as published in the Australian Financial Review on the first date on which interest accrues on that payment (or if that rate or publication is not published, the rate determined by the parties, acting reasonably, to be the nearest equivalent rate having regard to prevailing market conditions) plus (in either case) a margin of 2% per annum.

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

**Superior Proposal** means a bona fide, written Competing Proposal received by the Target after the date of this agreement which the Target Board determines, acting in good faith and acting reasonably (after consultation with, and the receipt of written advice from, its external legal advisors practising in the area of corporate law):

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal and the person or persons making it; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Scheme Shareholders than the Share Scheme, taking into account all aspects of the Competing Proposal.

**Target Announcement** means an announcement in the form of Annexure E.

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

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

**Target ESOP** means the Dominion Employee Share Option Plan.

**Target Group** means the Target and each Related Entity of the Target.

**Target Indemnified Parties** means the Target, its Related Entities and each of their respective Representatives.

**Target Information** means all information included in the Explanatory Memorandums other than the Bidder Information, the Independent Expert's Report and an investigating accountant's report.

**Target Material Adverse Change** means any event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters, has had or is reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Target Group, taken as a whole; or
- (b) without limitation to paragraph (a), the effect of a diminution in the:
  - (i) consolidated net assets of the Target Group (calculated on the basis of AIFRS as at the date of this agreement) of at least \$20 million compared to the consolidated net assets of the Target Group as at 30 June 2010; or
  - (ii) consolidated earnings before interest, tax, depreciation and amortisation excluding significant non-cash items (calculated on the basis of AIFRS as at the date of this agreement) in any financial year of the Target after the one ended 30 June 2010, taken as a whole, of at least \$10 million,

other than an event, occurrence or matter:

- (c) that is or arises from:
  - (i) changes in world gold prices or exchange rates;
  - (ii) general changes in economic, political or business conditions; or
  - (iii) changes in law, regulation or policy of any Regulatory Authority which impacts the Target Group's operations,in each case, which impacts producers of gold in a similar manner, but excluding for the avoidance of doubt changes in law, regulation or policy of any Regulatory Authority which are directed at the Target Group's existing operations or which changes affect the Target Group disproportionately more than other global gold producing entities, including but not limited to the Bidder;
- (d) reasonably attributable to the execution of the Transaction Documents or the announcement of the Schemes and the completion of the transactions contemplated by them; or
- (e) fairly disclosed in the Disclosure Letter or in any announcement made by Target to ASX prior to the parties entering into this agreement.

**Target Option Register** means the register of option holders of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Optionholder** means a person who is registered in the Target Option Register as a holder of Target Options.

**Target Options** means an option to acquire one unissued Target Share issued under the Target ESOP or the Dominion Long Term Incentive Plan (in respect of the Managing Director).

**Target Performance Rights** means a performance right issued under the Dominion Long Term Incentive Plan (in respect of the Managing Director).

**Target Prescribed Occurrence** means any of the occurrences set out in Schedule 2, other than:

- (a) as required to be done by the Target under the Transaction Documents;
- (b) as approved by the Bidder in writing (prior to the occurrence); or
- (a) in relation to any occurrence except those numbered 1 to 12, as fairly disclosed in the Disclosure Letter or in any announcement made by the Target to ASX prior to the parties entering into this agreement.

**Target Shareholder** means a person who is registered in the Target Share Register as a holder of Target Shares.

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

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Registries Limited of Level 7, 207 Kent Street, Sydney, New South Wales 2000, Australia.

**Target Warranties** means the warranties set out in Schedule 3.

**Tenements** means the mining tenements listed in the Disclosure Letter.

**Third Party** means a person other than a member of the Bidder Group or the Target Group.

**Timetable** means the indicative timetable in relation to the Schemes set out in Schedule 1, or such other indicative timetable as the Target and the Bidder agree in writing.

**Transaction** means:

- (a) the acquisition by the Bidder (or a Related Entity of the Bidder) of the Scheme Shares for the Share Scheme Consideration pursuant to the Share Scheme; and
- (b) the cancellation of the Scheme Options for the Option Scheme Consideration pursuant to the Option Scheme.

**Transaction Documents** means:

- (a) this agreement;
- (b) the Share Scheme;
- (c) the Option Scheme;
- (d) the Share Deed Poll; and
- (e) the Option Deed Poll.

**Warranty Claim** means any Claim by a party arising out of a breach of a Target Warranty or Bidder Warranty (as applicable).

## 1.2 Reasonable or best endeavours

Any provision of this agreement which requires a party to use best endeavours, reasonable endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:

- (a) commence any legal action or proceeding against any person; or
- (b) pay an amount of money to or for the benefit of any Third Party:
  - (i) in the form of an inducement or consideration to a Third Party to procure something other than the payment of reasonable expenses or costs and costs of advisers to procure the relevant thing; or
  - (ii) in circumstances that are commercially onerous or unreasonable in the context of this agreement,

except where that provision expressly specifies otherwise.

## 1.3 Knowledge and awareness of the Target or Bidder

If any Target Warranty or Bidder Warranty is qualified by the Target's or the Bidder's awareness or knowledge, the facts of which the Target or the Bidder is aware or that are within the Target's or the Bidder's awareness or knowledge are taken to be all facts of which any director or officer of the Target or the Bidder (as the case requires) is actually aware at the relevant time.

## 1.4 Business Days

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on or by the next Business Day except where this agreement expressly specifies otherwise.

## 1.5 Listing rules are law

A listing rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this agreement.

## 1.6 General rules of interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;

- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** or **cents** is to Australian currency;
- (k) a reference to time is to Sydney, Australia time; and
- (l) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## **2. Obligations in relation to Schemes**

### **2.1 Target to propose and implement Schemes**

The Target must propose and (subject to it becoming Effective) implement the Schemes on and subject to the terms and conditions of this agreement.

### **2.2 Bidder to assist**

The Bidder must assist the Target to propose and implement the Schemes on and subject to the terms and conditions of this agreement.

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## **3. Conditions precedent**

### **3.1 Conditions**

Subject to this clause 3, the obligations of the Bidder under clauses 5.3(k) and 5.3(l) and the Target under clauses 5.2(r) and 5.2(s) do not become binding on the parties and have no force or effect, and the Schemes must not become Effective, until each of the conditions listed in the first column of the following table has been either satisfied or waived in accordance with clause 3.7:

Condition	Right to waive
<p>(a) the Treasurer of the Commonwealth of Australia or his delegate has either:</p> <p>(i) provided written notice which is unconditional or subject only to conditions reasonably acceptable to the Bidder that there is no objection under the Foreign Acquisitions and Takeovers Act 1975 (Cth) or Australian foreign investment policy to the proposed acquisition by the Bidder of all of the Target Shares; or</p> <p>(ii) become precluded from exercising any power to make an order under the Foreign Acquisitions and Takeovers Act 1975 (Cth) in relation to the proposed acquisition by the Bidder of all of the Target Shares;</p>	Bidder
<p>(b) before 8.00 am on the Second Court Date, ASIC and ASX issue or provide such consents, approvals or waivers or do other acts which the Bidder and the Target agree are necessary to implement the Transaction. If such consents, approvals or doing of other acts are subject to conditions those conditions must be acceptable to the Bidder and the Target;</p>	Bidder and Target
<p>(c) all other approvals of any Regulatory Authority which the Target and the Bidder agree are necessary or desirable to implement the Transaction have been obtained either unconditionally or on conditions satisfactory to the Bidder and the Target acting reasonably and have not been withdrawn or revoked;</p>	Bidder and Target
<p>(d) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, or order issued by any Regulatory Authority and no other legal restraint preventing any of the transactions contemplated by this agreement is in effect as at 8.00 am on the Second Court Date;</p>	Bidder and Target
<p>(e) the Independent Expert concludes that the Share Scheme is in the best interests of Scheme Shareholders;</p>	Bidder and Target
<p>(f) the Independent Expert concludes that the Option Scheme is in the best interests of Scheme Optionholders;</p>	Bidder and Target
<p>(g) no Target Material Adverse Change has occurred after the date of this agreement and before 8.00 am on the Second Court Date;</p>	Bidder
<p>(h) no Bidder Material Adverse Change has occurred after the date of this agreement and before 8.00 am on the Second Court Date;</p>	Target
<p>(i) no Target Prescribed Occurrence has occurred or becomes known to the Bidder after the date of this agreement and before 8.00 am on the Second Court Date;</p>	Bidder

<b>Condition</b>	<b>Right to waive</b>
(j) no Bidder Prescribed Occurrence has occurred or becomes known to the Target after the date of this agreement and before 8.00 am on the Second Court Date;	Target
(k) before 8.00 am on the Second Court Date, the Target Shareholders approve the Share Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None
(l) before 8.00 am on the Second Court Date, the Target Optionholders approve the Option Scheme by the majorities required under section 411(4)(a)(i) of the Corporations Act;	Bidder
(m) the Court approves the Share Scheme in accordance with section 411(4)(b) of the Corporations Act;	None
(n) the Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act;	Bidder
(o) the Target Warranties are true and correct in all material respects on the date of this agreement and as at 8.00 am on the Second Court Date;	Bidder
(p) the Bidder Warranties are true and correct in all material respects on the date of this agreement and as at 8.00 am on the Second Court Date;	Target
(q) the Target, the Bidder and the holder of Target Performance Rights enters into a cancellation deed on terms and conditions reasonably satisfactory to the Bidder under which all of the Target Performance Rights are cancelled or acquired by the Bidder with effect from implementation of the Schemes on the Implementation Date for total cash consideration of \$102,000; and	Bidder
(r) if the Target must seek approvals from the Target Shareholders in accordance with clause 4.10(b), those approvals are obtained.	Bidder

### 3.2 Obligations in relation to Conditions

Each party must:

- (a) use all reasonable endeavours to ensure that each Condition:
  - (i) is satisfied as soon as practicable after the date of this agreement and in any event before the End Date; or
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied, as the case requires;
- (b) not take any action that will or is reasonably likely to hinder or prevent the satisfaction of any Condition except to the extent that such action is required to be taken pursuant to, or is otherwise permitted by, this agreement or is required by law;



- (c) co-operate with, and comply with all reasonable requests of, the other party for the purposes of procuring the satisfaction of any Condition; and
- (d) keep the other party informed of any fact, matter or circumstance of which it becomes aware that may result in a Condition not being satisfied in accordance with its terms.

### **3.3 Obligations in relation to Regulatory Conditions**

Without limiting clause 3.2 but subject to clause 3.4, the Bidder and the Target must use all reasonable endeavours to ensure that each Regulatory Condition is satisfied as soon as practicable after the date of this agreement and in particular the Bidder and the Target must:

- (a) provide to the other party (as applicable) a draft of each document which it has prepared for the purposes of procuring satisfaction of any Regulatory Condition and a reasonable opportunity to comment on that draft (except to the extent such document contains commercially sensitive information);
- (b) provide to the other party (as applicable) a copy of each notice given, application made and all other information supplied to any third party, and each notice or request received from any Regulatory Authority in connection with procuring the satisfaction of any Regulatory Condition;
- (c) notify the other party (as applicable) of any meetings to be held with a Regulatory Authority for the purposes of procuring the satisfaction of any Regulatory Condition and permit the other party and its professional advisers to be present at such meeting; and
- (d) consult with the other party (as applicable) in relation to any further information to be provided to the relevant Regulatory Authority.

### **3.4 Provision of undertakings**

Notwithstanding any other provision of this agreement, for the purposes of satisfying any Regulatory Condition, neither the Bidder nor the Target is required to agree to any conditions or to provide or to agree to provide any written undertakings to a Regulatory Authority which are not acceptable to the Bidder or the Target (as the case requires).

### **3.5 Notice of satisfaction of Conditions**

Each party must promptly after becoming aware of the satisfaction of any Condition notify the other party of the satisfaction of that Condition and provide reasonable evidence that the Condition has been satisfied.

### **3.6 Notice of failure of satisfaction of Conditions**

Each party must promptly after becoming aware of the failure to satisfy a Condition notify the other party of the failure to satisfy that Condition.

### **3.7 Waiver of Conditions**

The breach or non-fulfilment of a Condition:

- (a) may not be waived if the word "None" appears in the second column of the table in clause 3.1 opposite that Condition;
- (b) may be waived and may only be waived:

- For personal use only
- (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, by that party by notice to the other party;
  - (ii) subject to clause 3.7(b)(iii), if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, by written agreement between both parties; or
  - (iii) in the case of the Condition in clause 3.1(f) where the Bidder has notified the Target that it does not wish the Option Scheme to proceed, by the Bidder by notice to the Target.

A party entitled to waive or to agree to waive the breach or non-fulfilment of a Condition under this clause 3.7 may do so in its absolute discretion. A party that waives or agrees to waive a Condition is not prevented from bringing a Claim against the other party in respect of any breach of this agreement that caused that Condition not to be satisfied.

### **3.8 Certificate in relation to Conditions**

Each party must:

- (a) give the Court on the Second Court Date a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Conditions in clauses 3.1(m) and 3.1(n)) have been satisfied or waived; and
- (b) give the other party a draft of its certificate by 5.00 pm on the Business Day prior to the Second Court Date.

### **3.9 Consultation on failure of Conditions**

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement; or
- (b) any fact, matter or circumstance will prevent a Condition being satisfied by the date specified in clause 3.1 for its satisfaction (and the relevant breach or non-fulfilment of the Condition has not otherwise been waived in accordance with this agreement),

the parties must consult in good faith to:

- (c) determine whether a transaction which results in:
  - (i) the Bidder having legal and beneficial ownership of all Target Shares; and
  - (ii) the Bidder having legal and beneficial ownership of all Target Options or the Target Options being cancelled,may proceed by an alternative means or method;
- (d) extend the time or date for satisfaction of the relevant Condition or the End Date; or
- (e) change the date of application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Schemes or adjourning that application (as applicable) to another date agreed by the parties (being a date no later than 5 Business Days before the End Date).

### **3.10 Termination of agreement**

If the parties are unable to reach agreement under clause 3.9 within the Required Consultation Period, then unless the breach or non-fulfilment of the Condition is waived in accordance with this agreement, either party may terminate this agreement by notice in writing to the other party without incurring any liability for that termination (other than a liability under clause 10 or clause 11 if applicable), except where the relevant Condition has become incapable of satisfaction, has not been satisfied, or ceases to be satisfied, as a direct result of a failure by the party seeking to terminate to comply with a material obligation under this agreement.

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## **4. Schemes**

### **4.1 Share Scheme Consideration**

The Bidder undertakes to the Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration for the transfer to the Bidder of Scheme Shares held by Scheme Shareholders under the terms of the Share Scheme, the Bidder will:

- (a) accept that transfer; and
- (b) provide, or procure the provision to, each Scheme Shareholder the Share Scheme Consideration for each Scheme Share in accordance with the terms of the Share Scheme.

### **4.2 Option Scheme Consideration**

The Bidder undertakes to the Target (in the Target's own right and separately as trustee for each of the Scheme Optionholders) that, in consideration for the cancellation of Scheme Options held by Scheme Optionholders under the terms of the Option Scheme, the Bidder will provide, or procure the provision to, each Scheme Optionholder the Option Scheme Consideration for each Scheme Option in accordance with the terms of the Option Scheme.

### **4.3 Fractional entitlement**

If:

- (a) the number of Scheme Shares held by a Scheme Shareholder is such that an entitlement of that Scheme Shareholder to New Bidder Shares is not a whole number; or
- (b) the number of Scheme Options held by a Scheme Optionholder is such that an entitlement of that Scheme Optionholder to New Bidder Shares is not a whole number,

any fractional entitlement will:

- (c) where the entitlement is to half a New Bidder Share or more, be rounded up to the nearest whole number of New Bidder Shares; and
- (d) where the entitlement is to less than half a New Bidder Share, be rounded down to the nearest whole number of New Bidder Shares.

### **4.4 Ineligible Foreign Shareholders**

The Bidder has no obligation to provide, and will not provide, any New Bidder Shares to any Ineligible Foreign Shareholder under the Share Scheme, and instead:

- For personal use only
- (a) the Bidder must appoint the Sale Agent on or before the Record Date;
  - (b) the Bidder must provide, or procure the provision of, the New Bidder Shares which would otherwise be required to be provided to the Ineligible Foreign Shareholders under the Share Scheme to the Sale Agent;
  - (c) the Bidder must procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent sells or procures the sale (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, of all the New Bidder Shares provided to the Sale Agent pursuant to clause 4.4(b) and remits to the Bidder the proceeds of sale (**Share Proceeds**);
  - (d) the Bidder must pay all applicable brokerage, stamp duty and other costs and charges in connection with the sale of the New Bidder Shares pursuant to clause 4.4(c); and
  - (e) the Bidder must pay, or procure the payment, to each Ineligible Foreign Shareholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where:

B = the number of New Bidder Shares that would have been provided to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder;

C = the total number of New Bidder Shares which would otherwise have been provided to all Ineligible Foreign Shareholders collectively and which were instead provided to the Sale Agent; and

D = the Share Proceeds;

- (f) none of the Target, the Bidder or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares in accordance with clause 4.4(c). The sale of the New Bidder Shares under this clause 4.4 will be at the risk of the Ineligible Foreign Shareholders.

#### 4.5 Ineligible Foreign Optionholders

The Bidder has no obligation to provide, and will not provide, any New Bidder Shares to any Ineligible Foreign Optionholder under the Option Scheme, and instead:

- (a) the Bidder must appoint the Sale Agent on or before the Record Date;
- (b) the Bidder must provide, or procure the provision of, the New Bidder Shares which would otherwise be required to be provided to the Ineligible Foreign Optionholders under the Option Scheme to the Sale Agent;
- (c) the Bidder must procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent sells or procures the sale (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, of all the New Bidder Shares provided to the Sale Agent pursuant to clause 4.5(b) and remits to the Bidder the proceeds of sale (**Option Proceeds**);

- (d) the Bidder must pay all applicable brokerage, stamp duty and other costs and charges in connection with the sale of the New Bidder Shares pursuant to clause 4.5(c); and
- (e) the Bidder must pay, or procure the payment, to each Ineligible Foreign Optionholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where:

B = the number of New Bidder Shares that would have been provided to that Ineligible Foreign Optionholder had it not been an Ineligible Foreign Optionholder;

C = the total number of New Bidder Shares which would otherwise have been provided to all Ineligible Foreign Optionholders collectively and which were instead provided to the Sale Agent; and

D = the Option Proceeds;

- (f) none of the Target, the Bidder or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares in accordance with clause 4.4(c). The sale of the New Bidder Shares under this clause 4.5 will be at the risk of the Ineligible Foreign Optionholders.

#### 4.6 Share splitting

If the Bidder and the Target are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, before the Record Date, been party to a shareholding splitting or division or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Share Scheme Consideration, the Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and registered addresses of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice shall, for the purposes of the Share Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice shall, for the purposes of the Share Scheme, be taken to hold no Scheme Shares.

#### 4.7 Anti-manipulation

If the Bidder and the Target are of the opinion that a Scheme Shareholder or other person has, before the Record Date:

- (a) been party to an arrangement resulting in a change in the registered address of the Scheme Shareholder to a jurisdiction so as to make that Scheme Shareholder (the **relevant Scheme Shareholder**) an Ineligible Foreign Shareholder or a transfer of

Target Shares by the person to a person (also the **relevant Scheme Shareholder**) who would be an Ineligible Foreign Shareholder;

- (b) in circumstances where the Bidder and the Target are of the opinion that the arrangement or transfer was undertaken to achieve that result in order to maximise the cash consideration payable to the relevant Scheme Shareholder,

the Bidder may give notice to the relevant Scheme Shareholder prior to the Implementation Date:

- (c) setting out the name of the relevant Scheme Shareholder and the other persons involved;
- (d) stating that opinion; and
- (e) stating what, in its opinion, would have been the holdings and registered addresses at which the Scheme Shares held by the relevant Scheme Shareholder would have been held had the arrangement or transfer not been undertaken,

and after the notice has been so given, the Scheme Shares held by the relevant Scheme Shareholder shall be taken to be held in the holdings and registered addresses specified in notice.

#### **4.8 Provision of Target Share and Target Option information**

In order to facilitate the provision of New Bidder Shares to Scheme Shareholders and Scheme Optionholders:

- (a) the Target must provide, or procure the provision, to the Bidder or a nominee of the Bidder a complete copy of the Target Share Register and the Target Option Register as at the Record Date (which must include the name, address and registered holding of each Scheme Shareholder and Scheme Optionholder as at the Record Date), within 2 Business Days after the Record Date; and
- (b) the details and information to be provided under clause 4.8(a) must be provided in such form as the Bidder or its Representatives may reasonably require.

#### **4.9 Shares to rank equally**

The Bidder undertakes in favour of the Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders and Scheme Optionholders) that:

- (a) the New Bidder Shares will rank equally in all respects with all existing Bidder Shares; and
- (b) on issue each New Bidder Share will be fully paid and free from all Encumbrances.

#### **4.10 ASX waiver**

- (a) As soon as reasonably practicable after the date of this agreement, the Target must use its reasonable endeavours to procure that ASX grants a waiver from rule 6.23 of the Listing Rules in respect of the Option Scheme and the cancellation of Target Performance Rights referred to in clause 3.1(q).
- (b) If the waiver referred to in clause 4.10(a):

- (i) is obtained on or before the date on which the Regulator's Draft is given to ASIC, but is subject to one or more conditions that are not reasonably satisfactory to the Bidder; or
- (ii) is not obtained on or before the date on which the Regulator's Draft is given to ASIC,

the Target must seek any approvals that are required from the Target Shareholders under rule 6.23 of the Listing Rules in relation to the Option Scheme and the cancellation of Target Performance Rights referred to in clause 3.1(q) on the same date as the Scheme Meetings.

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## 5. Implementation of Schemes

### 5.1 Timetable

The parties acknowledge that the Timetable is an indicative timetable and will consult with each other regularly in relation to:

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

### 5.2 Target's obligations

The Target must take all steps reasonably necessary to propose and implement the Schemes as soon as reasonably practicable after the date of this agreement and use reasonable endeavours so as to complete the Transaction substantially in accordance with the Timetable, and in particular the Target must:

- (a) **promote merits of Transaction:** subject to proper performance by the Target Directors of their fiduciary and statutory duties, participate in, and ensure the Target Board participates in, efforts reasonably requested by the Bidder to promote the merits of the Transaction to Target Shareholders and Target Optionholders, including (subject to the foregoing) meeting with key Target Shareholders and Target Optionholders at the reasonable request of the Bidder;
- (b) **appoint counsel and approach court:** appoint Senior Counsel or Queen's Counsel reasonably experienced in schemes of arrangement to represent the Target in Court on the First Court Date and the Second Court Date and apply to the Court for the First Court Date and Second Court Date hearings;
- (c) **Explanatory Memorandums:** prepare the Explanatory Memorandums in accordance with the requirements of the Corporations Act, the Listing Rules and the Policy Statements, provide successive advanced drafts of the Explanatory Memorandums to the Bidder and allow the Bidder a reasonable opportunity to review and comment on those drafts, consult with the Bidder in relation to the content and presentation of those drafts and consider in good faith comments on, and suggested amendments to, those drafts from the Bidder and its Representatives;
- (d) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report and any other materials to be prepared by the Independent Expert for inclusion in the Explanatory Memorandums;

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- (e) **assist investigating accountant:** subject to the investigating accountant entering into arrangements with the Bidder as to confidentiality in a form reasonably acceptable to the Target, provide all assistance and information reasonably requested by the investigating accountant to enable it to prepare its reports for inclusion in the Explanatory Memorandums and any other materials to be prepared by it for inclusion in the Explanatory Memorandums;
  - (f) **Bidder Information:** incorporate the Bidder Information in the Explanatory Memorandums and update and amend such Bidder Information as reasonably requested by the Bidder prior to finalising the Regulator's Draft;
  - (g) **proposed Regulator's Draft:** provide the Bidder with the proposed Regulator's Draft at least 2 Business Days before its proposed submission to ASIC to enable the Bidder to review the proposed Regulator's Draft;
  - (h) **provide Regulator's Draft to ASIC:** as soon as reasonably practicable, provide the Regulator's Draft to:
    - (i) ASIC for its review for the purposes of section 411(2) of the Corporations Act; and
    - (ii) the Bidder,and liaise with ASIC as necessary during the Regulatory Review Period;
  - (i) **keep the Bidder informed:** during the Regulatory Review Period:
    - (i) promptly provide to the Bidder and include in revised drafts of the Explanatory Memorandums any new information in relation to the Target Group not included in the Regulator's Draft which is required by the Corporations Act, Listing Rules or the Policy Statements to be included in the Explanatory Memorandums; and
    - (ii) promptly notify, and consult with, the Bidder in relation to any matters raised by ASIC in connection with the Explanatory Memorandums or the Schemes and any presentation or submission to, or at any proposed meeting with, ASIC, and co-operate and consult with the Bidder to resolve any such matters;
  - (j) **Court documents:** consult with the Bidder in relation to the content of the documents required for the purposes of the hearings on the First Court Date and the Second Court Date, including for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from the Bidder and its Representatives;
  - (k) **approval of Explanatory Memorandums:** as soon as reasonably practicable after the end of the Regulatory Review Period (or, if earlier and applicable, after ASIC informs the Target that it does not propose to make submissions to the Court under section 411(2)(b)(ii) of the Corporations Act), procure that a meeting of the Target Board is convened to consider approving the Explanatory Memorandums for dispatch to Target Shareholders and Target Optionholders, subject to the approval of the Court;
  - (l) **First Court Hearing:** provided the approval of the Target Board referred to in clause 5.2(k) is given, lodge all necessary documents with the Court and take all



other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meetings;

- (m) **registration of Explanatory Memorandums:** request ASIC to register the explanatory statements included in the Explanatory Memorandums in relation to the Schemes in accordance with section 412(6) of the Corporations Act;
- (n) **comply with Court orders:** comply with the orders of the Court including, if ordered:
- (i) dispatch the Scheme Explanatory Memorandum to the Target Shareholders and convene and hold the Share Scheme Meeting; and
  - (ii) dispatch the Option Explanatory Memorandum to the Target Optionholders and convene and hold the Option Scheme Meeting.
- (o) **update Explanatory Memorandums:** if it becomes aware of information after dispatch of the Explanatory Memorandums that is material for disclosure to Target Shareholders or Target Optionholders in deciding whether to approve the Schemes or that is required to be disclosed to Target Shareholders or Target Optionholders under any applicable law, inform Target Shareholders and Target Optionholders of the information in an appropriate and timely manner, in accordance with applicable law and after having applied to the Court for such orders (if any) in relation to that disclosure as are appropriate, after consulting with the Bidder as to the content and presentation of that information;
- (p) **section 411(17)(b) statement:** apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Schemes;
- (q) **Second Court Date:** if:
- (i) the resolution submitted to the Share Scheme Meeting in relation to the Share Scheme is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
  - (ii) the resolution submitted to the Option Scheme Meeting in relation to the Option Scheme is passed by the majorities required under section 411(4)(a)(i) of the Corporations Act;
- and provided all other Conditions (other than the Conditions referred to in clauses 3.1(m) and 3.1(n)) are satisfied or waived in accordance with this agreement, apply to the Court for orders approving the Schemes under section 411(4)(b) of the Corporations Act;
- (r) **lodge copy of Court orders:** if the Court makes orders under section 411(4)(b) of the Corporations Act approving the Schemes, promptly lodge with ASIC an office copy of those orders in accordance with section 411(10) of the Corporations Act;
- (s) **registration:** if the Court makes orders under section 411(4)(b) of the Corporations Act approving the Schemes:
- (i) use reasonable endeavours to procure that ASX suspends trading in Target Shares from the close of trading on the Effective Date;

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- (ii) close the Target Share Register as at the Record Date and determine the identity of the Scheme Shareholders and their entitlements to the Share Scheme Consideration in accordance with the Share Scheme;
  - (iii) close the Target Option Register as at the Record Date and determine the identity of the Scheme Optionholders and their entitlements to the Option Scheme Consideration in accordance with the Option Scheme;
  - (iv) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide or procure the provision of the Share Scheme Consideration in accordance with the Share Scheme;
  - (v) provide to the Bidder all information about the Scheme Optionholders that the Bidder reasonably requires in order for the Bidder to provide or procure the provision of the Option Scheme Consideration in accordance with the Option Scheme;
  - (vi) subject to the Bidder satisfying its obligations under clause 5.3(k), execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares in the name of the Bidder (or the Bidder's nominee) in accordance with the Share Scheme;
  - (vii) subject to the Bidder satisfying its obligations under clause 5.3(l), cancel the Scheme Options in accordance with the Option Scheme; and
  - (viii) do all other things contemplated by or necessary to give effect to the Schemes and the orders of the Court approving the Schemes;
  - (t) **ASX listing:** use reasonable endeavours to maintain its admission to the official list of ASX and the quotation of Target Shares on ASX up to and including the Implementation Date or such later date as the Bidder reasonably requests;
  - (u) **Target incentive plans:** as soon as reasonably practicable, suspend all of Target executive and employee incentive plans that will or could result in securities being granted or offered to Target Group officers and employees (without prejudice to the rights of holders of Target Options and Target Performance Rights which are in existence at the date of this agreement);
  - (v) **Target dividend reinvestment plan:** as soon as reasonably practicable, suspend the Target dividend reinvestment plan; and
  - (w) **Target ESOP:** procure that the Target Board does not exercise its discretion under rule 7.2 of the Target ESOP.

### 5.3 Bidder's obligations

The Bidder must take all steps reasonably necessary to assist the Target to propose and implement the Schemes as soon as is reasonably practicable after the date of this agreement and use reasonable endeavours so as to complete the transaction substantially in accordance with the Timetable, and in particular the Bidder must:

- (a) **Bidder Information:** prepare and provide to the Target the Bidder Information in a form appropriate for inclusion in the Explanatory Memorandums (the Bidder acknowledging that the Target will rely on such information to prepare the Explanatory Memorandums and agreeing the Bidder Information will be provided in good faith), consult with the Target in relation to the content and presentation of

that information in the Explanatory Memorandums and consider in good faith comments on, and suggested amendments to, that information from the Target and its Representatives, and ensure that the Bidder Information is not misleading or deceptive in any material respect at the time the Explanatory Memorandums are despatched;

- (b) **assist Independent Expert:** subject to the Independent Expert entering into arrangements with the Target as to confidentiality in a form reasonably acceptable to the Bidder, provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its reports for inclusion in the Explanatory Memorandums and any other materials to be prepared by it for inclusion in the Explanatory Memorandums;
- (c) **investigating accountant:** promptly appoint any investigating accountant to be appointed in connection with the preparation of the Explanatory Memorandums and provide all assistance and information reasonably requested by the investigating accountant in connection with its report for inclusion in the Explanatory Memorandums and any other materials to be prepared by the investigating accountant for inclusion in the Explanatory Memorandums;
- (d) **review Explanatory Memorandums:** as soon as reasonably practicable after receipt from the Target of a draft of the Explanatory Memorandums in accordance with clause 5.2(c) provide the Target with any comments or suggested amendments to that draft in good faith;
- (e) **comments on Regulator's Draft:** as soon as reasonably practicable after receipt from the Target of the proposed Regulator's Draft provided in accordance with clause 5.2(g), either:
- (i) confirm in writing to the Target that the Bidder Information in the form and context in which it appears in the draft of the Explanatory Memorandums is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to the Target the changes required to ensure that the Bidder Information in the form and context in which it appears in the Explanatory Memorandums is not misleading or deceptive in any material respect and does not contain any material omission;
- (f) **approval of Explanatory Memorandums:** as soon as reasonably practicable after the end of the Regulatory Review Period (or, if earlier and applicable, after ASIC informs the Target that it does not propose to make submissions to the Court under section 411(2)(b)(ii) of the Corporations Act), procure that a meeting of the Bidder Board is convened to consider approving those sections of the Explanatory Memorandums that relate to any Bidder Indemnified Parties appropriate for dispatch to Target Shareholders and Target Optionholders, subject to the approval of the Court;
- (g) **update Bidder Information:** if at any time after the dispatch of the Explanatory Memorandums it becomes aware:
- (i) of new information which, were it known at the time of dispatch, should have been included in any Bidder Information provided previously to the Target; or

- (ii) that any part of the Bidder Information contained in the Explanatory Memorandums is misleading or deceptive in any material respect (whether by omission or otherwise),

advise the Target so that the Target can determine whether supplementary disclosure to Target Shareholders and Target Optionholders is required;

- (h) **Share Deed Poll:** prior to or on the First Court Date, execute the Share Deed Poll and deliver the executed Share Deed Poll to the Target;
- (i) **Option Deed Poll:** prior to or on the First Court Date, execute the Option Deed Poll and deliver the executed Option Deed Poll to the Target;
- (j) **representation:** procure that it is separately represented at the hearings on the First Court Date and the Second Court Date, at which hearings the Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Schemes;
- (k) **Share Scheme Consideration:** if the Share Scheme becomes Effective, provide, or procure the provision of, the Share Scheme Consideration on the Implementation Date in accordance with the Share Scheme;
- (l) **Option Scheme Consideration:** if the Option Scheme becomes Effective, provide, or procure the provision of, the Option Scheme Consideration on the Implementation Date in accordance with the Option Scheme;
- (m) **Employees and Director arrangements:** after the Schemes become Effective, comply with and honour, and cause the Target to comply with and honour, all employment contracts with all Target employees and, subject to law, directors, including making directors' retirement payments disclosed in the Disclosure Letter; and
- (n) **Directors:** cause one (or if agreed with the Target, more than one) Target Director nominated by the Target and agreed by the Bidder to be appointed as a director of the Bidder as soon as reasonably practicable after the Scheme becomes Effective.

#### 5.4 Target registry details

For the purposes of clause 5.2(s), the Target must give all necessary directions to the Target Registry to ensure that any information that the Bidder reasonably requests in relation to the Target Share Register and Target Option Register, including any CHESSE sub-register and any issuer-sponsored sub-register, is promptly provided to the Bidder and, where requested by the Bidder, the Target must procure that such information is made available in such electronic form as is reasonably requested by the Bidder.

#### 5.5 Responsibility for information

The Bidder's obligations under clauses 5.3(c) and 5.3(e) relate only to the factual accuracy of Bidder Information and the Bidder takes no responsibility for information in the Explanatory Memorandums other than the Bidder Information. The Explanatory Memorandums must include a statement that:

- (a) the Bidder Indemnified Parties are not responsible for any information contained in the Explanatory Memorandums other than the Bidder Information; and

- (b) the Target Indemnified Parties are not responsible for any information contained in the Explanatory Memorandums other than the Target Information.

## **5.6 Disputes in relation to information**

If there is a dispute between the parties in relation to the presentation or content of any part of the Explanatory Memorandums (including the Bidder Information), the parties must consult in good faith and use their reasonable endeavours to resolve the dispute within 2 Business Days of the dispute arising. If the parties fail to agree on the disputed presentation or content:

- (a) the Target will have the final decision on any information other than the Bidder Information, provided that such information complies with the Corporations Act, the Listing Rules and the Policy Statements; and
- (b) the Bidder will have the final decision on any Bidder Information, provided that the Bidder Information complies with the Corporations Act, the Listing Rules and the Policy Statements.

The parties must continue to perform their obligations under this agreement even where there is a dispute in relation to the presentation or content of any part of the Explanatory Memorandums.

## **5.7 Target indemnity**

The Target acknowledges and agrees that it is responsible for the Target Information contained in the Explanatory Memorandums and must pay to the Bidder on demand an amount equal to all Indemnified Losses suffered or incurred by the Bidder Indemnified Parties arising out of or in connection with any failure of the Target Information to comply with the Corporations Act, the Listing Rules or the Policy Statements in connection with its inclusion in the Explanatory Memorandums.

## **5.8 Bidder indemnity**

The Bidder acknowledges and agrees that it is responsible for the Bidder Information contained in the Explanatory Memorandums and must pay to the Target on demand an amount equal to all Indemnified Losses suffered or incurred by the Target Indemnified Parties arising out of or in connection with any failure of such Bidder Information to comply with the Corporations Act, the Listing Rules or the Policy Statements in connection with its inclusion in the Explanatory Memorandums.

## **5.9 Verification**

The Target and the Bidder must undertake reasonable verification processes in relation to the Explanatory Memorandums and make the results of such processes available on request by the other party to comply with their respective obligations under clauses 5.2(k) and 5.3(f).

## **5.10 Reconstitution of Target Board**

Subject to the Schemes becoming Effective, the Target must take all actions necessary to:

- (a) procure that a majority of the Target Directors and a majority of the directors of each Subsidiary of the Target resign their office on or before the Effective Date;
- (b) cause the appointment, on or before the Effective Date, to the Target Board and to the board of each Subsidiary of the Target of that number of persons nominated by the Bidder which will be a majority of each respective board, subject to those persons having provided a consent to act as directors of the relevant companies;

- (c) procure that any Target Directors or directors of each Subsidiary of the Target who are not nominees of the Bidder on the Implementation Date resign from their office on the Implementation Date; and
- (d) cause the appointment, on the Implementation Date, to the Target Board and to the board of each Subsidiary of the Target of any persons nominated by the Bidder, subject to those persons having provided a consent to act as directors of the relevant companies.

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## **6. Conduct of business and requests for access**

### **6.1 Conduct of business**

Subject to clause 6.2, from the date of this agreement up to and including the Implementation Date, the Target must procure that each member of the Target Group conducts the Business in the ordinary and usual course consistent with its usual business practices and in accordance with all applicable laws and regulations and does not make any significant change to the nature or scale of any activity comprised in the Business.

### **6.2 Permitted activities**

Nothing in clause 6.1 restricts any member of the Target Group from any activity which:

- (a) is required to be done by the Target under the Transaction Documents;
- (b) is approved by the Bidder in writing (prior to the activity);
- (c) has been fairly disclosed to ASX prior to the date of this agreement; or
- (d) is fairly disclosed in the Disclosure Letter.

### **6.3 Transition and integration plan**

As soon as practicable after executing the agreement, the Target must consult with the Bidder in good faith to discuss and agree a transition and integration plan, to the extent that to do so will not constitute a breach of the fiduciary or statutory duties of the Target Board.

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## **7. Recommendation and intentions**

### **7.1 Target Directors recommendation**

Subject to clause 7.2, each Target Director in office at the relevant time must, in the Target Announcement and the Explanatory Memorandums, recommend that:

- (a) Target Shareholders vote in favour of all resolutions to be proposed at the Share Scheme Meeting in relation to the Share Scheme and approve the Share Scheme without any qualification other than a qualification that the recommendation is subject to:
- (i) no Superior Proposal being made; and
- (ii) the Independent Expert opining that the Share Scheme is in the best interests of the Target Shareholders; and
- (b) Target Optionholders vote in favour of all resolutions to be proposed at the Option Scheme Meeting in relation to the Option Scheme and approve the Option Scheme

without any qualification other than a qualification that the recommendation is subject to:

- (i) no Superior Proposal being made; and
- (ii) the Independent Expert opining that the Option Scheme is in the best interests of the Target Optionholders.

## **7.2 Maintenance of recommendation**

Neither a Target Director nor the Target Board may make any public statement or publicly take (or fail to take) any other action which qualifies their support for the Schemes and the Transaction, or which contradicts, or subsequently change, withdraw or modify:

- (a) the recommendation referred to in clause 7.1(a) except where:
  - (i) the Target Board determines, after the Bidder's rights under clause 9.7 have been exhausted, that a Competing Proposal constitutes a Superior Proposal;
  - (ii) the Independent Expert does not opine in its final report to the Target for inclusion in the Explanatory Memorandums that the Share Scheme is in the best interests of Target Shareholders or where the Independent Expert modifies its report to this effect; or
  - (iii) the Target Board has determined in good faith, having received expert advice as appropriate, that the duties of the Target Directors require them to change their recommendation; or
- (b) the recommendation referred to in clause 7.1(b) except where:
  - (i) the Target Board determines, after the Bidder's rights under clause 9.7 have been exhausted, that a Competing Proposal constitutes a Superior Proposal;
  - (ii) the Independent Expert does not opine in its final report to the Target for inclusion in the Explanatory Memorandums that the Option Scheme is in the best interests of Target Optionholders or where the Independent Expert modifies its report to this effect; or
  - (iii) the Target Board has determined in good faith, having received expert advice as appropriate, that the duties of the Target Directors require them to change their recommendation.

## **7.3 Target Director intentions**

Subject to clause 7.4, each Target Director must:

- (a) announce in the Target Announcement and the Explanatory Memorandums their intention to vote in favour of the Share Scheme any Target Shares in which they have a Relevant Interest and in respect of which they have power to vote, without any qualification other than a qualification that the intention is subject to:
  - (i) no Superior Proposal being made; and
  - (ii) the Independent Expert opining that the Share Scheme is in the best interests of the Target Shareholders; and

- (b) announce in the Target Announcement and the Explanatory Memorandums their intention to vote in favour of the Option Scheme any Target Options in which they have a Relevant Interest and in respect of which they have power to vote, without any qualification other than a qualification that the intention is subject to:
- (i) no Superior Proposal being made; and
  - (ii) the Independent Expert opining that the Option Scheme is in the best interests of the Target Optionholders.

## **7.4 Maintenance of intentions**

A Target Director may make any public statement which qualifies their stated intention:

- (a) referred to in clause 7.3(a), where:
  - (i) the Target Board determines, after the Bidder's rights under clause 9.7 have been exhausted, that a Competing Proposal constitutes a Superior Proposal;
  - (ii) the Independent Expert does not opine in its final report to the Target for inclusion in the Explanatory Memorandums that the Share Scheme is in the best interests of Target Shareholders or where the Independent Expert modifies its report to this effect; or
  - (iii) clause 7.2(a)(iii) applies; or
- (b) referred to in clause 7.3(b), where:
  - (i) the Target Board determines, after the Bidder's rights under clause 9.7 have been exhausted, that a Competing Proposal constitutes a Superior Proposal;
  - (ii) the Independent Expert does not opine in its final report to the Target for inclusion in the Explanatory Memorandums that the Option Scheme is in the best interests of Target Optionholders or where the Independent Expert modifies its report to this effect; or
  - (iii) clause 7.2(b)(iii) applies.

## **7.5 Target procurement**

The Target must use its best endeavours to procure that each Target Director acts in accordance with their obligations under clauses 7.1, 7.2, 7.3 and 7.4.

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## **8. Announcements**

### **8.1 Announcement of transaction**

Immediately after the execution of this agreement, the Target must issue the Target Announcement to ASX.

### **8.2 Public announcements**

Subject to clause 8.3, neither the Target nor the Bidder may make any public announcement or disclosure in relation to the Schemes or the Transaction (excluding any staff, supplier or



customer announcements or presentations) or termination of this agreement without prior consultation with the other party.

### **8.3 Exception**

The Target or the Bidder may make any announcement or disclosure in relation to the Schemes or the Transaction without consulting with the other party if immediate disclosure is required by law.

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## **9. Exclusivity**

### **9.1 No shop**

During the Exclusivity Period, the Target must not, and must ensure that its Representatives do not, except with the prior written consent of the Bidder solicit or invite any Competing Proposal or initiate discussions with any third party which may reasonably be expected to lead to a Competing Proposal.

### **9.2 No talk and no due diligence**

Subject to clause 9.3, during the Exclusivity Period, the Target must not, and must ensure that its Representatives do not, except with the prior written consent of the Bidder:

- (a) participate in any negotiations in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
- (b) provide any information to a third party for the purposes of enabling that party to make a Competing Proposal; or
- (c) communicate any intention to do any of the things listed in clauses 9.2(a) or 9.2(b).

### **9.3 Exceptions**

- (a) Clause 9.2 does not apply if the Target Board, acting in good faith, after having obtained written advice from its legal and financial advisers, determines that the Competing Proposal may reasonably be expected to lead to a Superior Proposal and that failing to respond to the Competing Proposal in a manner described in clause 9.2 would be likely to constitute a breach of the Target Board's fiduciary or statutory duties.
- (b) For the avoidance of doubt, clause 9.2 does not apply to the normal provision of information to a Regulatory Authority, auditors, advisers, financiers, customers, joint venturers and suppliers in the ordinary course of business or making presentations to brokers, portfolio investors, analysts and other parties in the ordinary course of business.

### **9.4 No commitments**

During the Exclusivity Period, the Target must not, and must ensure that its Representatives do not, except with the prior written consent of the Bidder, enter into any deed, arrangement or understanding in relation to a Competing Proposal which would have the effect of requiring the Target to abandon, or otherwise fail to proceed with, the possible transactions the subject of this agreement unless the Target Board, acting in good faith and in order to satisfy its fiduciary or statutory duties, determines that the Competing Proposal is a Superior Proposal.

## 9.5 Notice of Competing Proposal

During the Exclusivity Period, the Target must promptly notify the Bidder if it or any of its Representatives receive any inquiry or proposal from any person (**Rival Bidder**) which may reasonably be expected to lead to a Competing Proposal but no other information is required to be communicated at this stage.

## 9.6 Target's response to a Competing Proposal

Without prejudice to the Bidder's rights under this clause, if at any time during the Exclusivity Period any Target Director wishes to approve or publicly recommend entry into any agreement, commitment, arrangement or understanding relating to a Competing Proposal, the Target must ensure that they do not do so:

- (a) unless the Competing Proposal is bona fide and is made in writing; and
- (b) until each of the following events has occurred:
  - (i) the Target Board has determined in good faith after consultation with the Target's legal and financial advisers that:
    - A. failing to respond to the Competing Proposal would be likely to constitute a breach of its fiduciary or statutory duties; and
    - B. the Competing Proposal:
      - 1) is capable of being valued and completed; and
      - 2) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders than the Share Scheme,after taking into account all aspects of the Competing Proposal (including its terms and conditions and the identity of the Rival Bidder);
  - (ii) the Target has given the Bidder notice in writing of its intention to enter into an agreement, commitment, arrangement or understanding in relation to that Competing Proposal, subject to the Bidder's rights under clause 9.7, as well as, notwithstanding any other provision of this agreement, full details of all material terms of the Competing Proposal (including the identity of the Rival Bidder and details of the proposed consideration, conditions and break fee (if any)), together with any material confidential information concerning the Target Group's operations provided to the Rival Bidder or any person associated with the Competing Proposal not previously provided to the Bidder;
  - (iii) the Bidder's rights under clause 9.7 have been exhausted; and
  - (iv) the Target Board has made the determination contemplated by clause 9.6(b)(i)B in respect of that Competing Proposal after the Bidder's rights under clause 9.7 have been exhausted and after evaluation of any Counterproposal.

## 9.7 Bidder's right of last offer

If the Target gives notice to the Bidder under clause 9.6(b)(ii):

- (a) the Bidder will have the right, but not the obligation, at any time during the period of 3 Business Days following receipt of such notice, to make an offer to the Target that delivers a benefit to Target Shareholders that is at least equal to that of the Competing Proposal (**Counterproposal**);
- (b) if the Bidder makes a Counterproposal, the Target and the Target Board must consider it in good faith; and
- (c) if the Target Board, acting reasonably, considers that the Counterproposal would provide a benefit to Target Shareholders that is at least equal to that of the Competing Proposal, then the Target and the Bidder must use reasonable endeavours to agree to amendments to the Transaction Documents that are reasonably necessary to reflect the Counterproposal and to enter into one or more amended agreements to give effect to those amendments and to implement the Proposal, in each case as soon as reasonable practicable.

For the purposes of this clause 9.7, each successive material modification of a Rival Bidder's Competing Proposal will constitute a new Competing Proposal.

## 9.8 Exception to clauses 9.6 and 9.7

Clauses 9.6 and 9.7 do not apply if the Target Board, acting in good faith, after having obtained written advice from its legal and financial advisers, determines that complying with the relevant clause would be likely to constitute a breach of the Target Board's fiduciary or statutory duties.

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## 10. Break Fee

### 10.1 Background

This clause 10 has been agreed to in circumstances where:

- (a) the Bidder and the Target believe the implementation of the Schemes will provide benefits to the Target, the Target Shareholders, the Target Optionholders, the Bidder and the holders of Bidder Shares;
- (b) the Target and the Bidder each acknowledges that the Bidder Group and the Target Group has incurred, or will incur significant costs, including:
  - (i) external advisory costs and fees in planning and implementing the Schemes;
  - (ii) internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
  - (iii) out of pocket expenses incurred by employees, advisers and agents of the Bidder Group in planning and implementing the Schemes; and
  - (iv) opportunity costs in pursuing the Schemes or in not pursuing alternative acquisitions or strategic initiatives,

directly or indirectly as a result of pursuing the Schemes, and will incur further costs if the Schemes are not successful; and

- (c) the Bidder and the Target have each requested that provision be made for the payments outlined in this clause, without which the Bidder and the Target would not have entered into this agreement.

The parties acknowledge and agree that the costs actually incurred by the Bidder Group or the Target Group as referred to in clause 10.1(b) will be of such a nature that they cannot be accurately ascertained, but that the Break Fee is a genuine and reasonable pre-estimate of the cost and loss that would actually be suffered by the Bidder or the Target if the Schemes are not implemented.

## 10.2 Payment of Break Fee by Target

Subject to clauses 10.4, 10.5 and 10.6 and provided the Bidder is not in material breach of a material obligation under this agreement, the Target must pay the Bidder the Break Fee if any of the following events occur:

- (a) at any time before the Scheme Meetings, any Target Director:
- (i) fails to recommend as described in clause 7.1;
  - (ii) makes any public statement or publicly takes any action that contradicts their recommendation; or
  - (iii) withdraws their recommendation,
- other than in circumstances where:
- (iv) the Independent Expert opines in its final report for inclusion in the Explanatory Memorandums that the Share Scheme is not in the best interests of Target Shareholders or modifies its report to so opine (other than where its conclusion is due to the existence of a Competing Proposal); or
  - (v) the Target validly terminates this agreement under clause 14.1(e) (in respect of a Condition in clause 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(h), 3.1(j) or 3.1(p)) or 14.3(b);
- (b) as a result of a material failure by the Target to comply with any material obligation under this agreement (after the Bidder had given the Target written notice of the failure and a reasonable time to remedy the failure):
- (i) the Court fails to approve the Schemes for the purpose of section 411(1)(b) of the Corporations Act; or
  - (ii) the Effective Date of the Schemes has not occurred prior to the End Date;
- (c) at any time prior to the Schemes becoming Effective a Competing Proposal is announced and, within 12 months of such announcement, that Competing Proposal or a transaction substantially similar to that Competing Proposal:
- (i) results in a person obtaining Control of, or merging with, the Target;
  - (ii) is completed; or
  - (iii) in the case of a Competing Proposal that involves a takeover bid made under Chapter 6 of the Corporations Act, becomes free from any defeating conditions as that term is defined in the Corporations Act.

### 10.3 Payment of Break Fee by Bidder

Subject to clauses 10.4, 10.5 and 10.6 and provided the Target is not in breach of a material obligation under this agreement, the Bidder must pay the Target a Break Fee if as a result of a material failure by the Bidder to comply with any material obligation under this agreement (after the Target had given the Bidder written notice of the failure and a reasonable time to remedy the failure):

- (a) the Court fails to approve the Schemes for the purpose of section 411(1)(b) of the Corporations Act; or
- (b) the Effective Date of the Schemes has not occurred prior to the End Date.

### 10.4 Timing of payment

The Target or Bidder (as the case requires) must pay the Break Fee without set-off or withholding within 15 Business Days of receipt of a written demand for payment from the other, which demand must set out the circumstances which give rise to the payment.

### 10.5 Notification

Each of the Target and the Bidder must notify the other in writing as soon as practicable after it becomes aware of the existence or occurrence of any event or circumstance specified in clause 10.2 and such notice must include full particulars of the relevant event or circumstance.

### 10.6 Compliance with law

If it is finally determined by the Takeovers Panel or a court that all or any part of a Break Fee (**Impugned Amount**):

- (a) is unenforceable or would, if paid, be unlawful for any reason; or
- (b) constitutes or would, if performed, constitute:
  - (i) a breach of the fiduciary or statutory duties of the Target Board; or
  - (ii) unacceptable circumstances within the meaning of the Corporations Act or a breach an order of the Takeovers Panel,

then:

- (c) the requirement to pay that Break Fee does not apply to the extent of the Impugned Amount (but the Target or the Bidder must comply with its obligations under this agreement with respect to payment of the balance of that Break Fee); and
- (d) if the Bidder or the Target has received the Impugned Amount, it must refund it within 5 Business Days of the final determination being made.

### 10.7 Exclusive remedy

The Bidder and the Target each agrees that if an amount is paid by the other under this clause 10 in respect of an act or event that payment constitutes its sole and exclusive remedy for any liability arising under or in connection with this agreement in respect of that act or event.

### 10.8 No application to court

No party must make, nor may it cause or permit to be made, any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in clause 10.6.

## **10.9 Submissions**

If a Third Party makes any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in clause 10.6, then the parties must make submissions in the course of those proceedings supporting to the fullest extent reasonably practicable the position that no such determination should be made.

## **10.10 Other claims**

Despite anything else contained in this agreement:

- (a) no Break Fee is payable by either party to the other party if the Schemes become Effective, even if an event or circumstance specified in clause 10.2 or 10.3 exists or occurs; and
- (b) the Target or the Bidder can only ever be liable to pay the Break Fee once.

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## **11. Liability of directors and employees**

### **11.1 No action by Target against Bidder officers and Representatives**

The Target waives and must procure that each other member of the Target Group waives all rights and claims that they may have against the current or former officers, employees or Representatives of any member of the Bidder Group in relation to any matter arising directly or indirectly in connection with a Transaction Document, except to the extent that such rights or claims arise out of the fraud, wilful misconduct or wilful default of such person. The parties acknowledge and agree that:

- (a) the Bidder has sought and obtained this waiver as agent for and on behalf of the current and former officers, employees and Representatives of each member of the Bidder Group and holds the benefit of this clause 11.1 as trustee for them; and
- (b) the provisions of this clause 11.1 may be enforced by the Bidder on behalf of and for the benefit of the current and former officers, employees and Representatives of any member of the Bidder Group and those persons may plead this clause 11.1 in answer to any claim made by any member of the Target Group against them.

### **11.2 No action by Bidder against Target officers and Representatives**

The Bidder waives and must procure that each other member of the Bidder Group waives all rights and claims that they may have against the current or former officers, employees or Representatives of any member of the Target Group in relation to any matter arising directly or indirectly in connection with a Transaction Document except to the extent that such rights or claims arise out of the fraud, wilful misconduct or wilful default of such person. The parties acknowledge and agree that:

- (a) the Target has sought and obtained this waiver as agent for and on behalf of the current and former officers, employees and Representatives of each member of the Target Group and holds the benefit of this clause 11.2 as trustee for them; and
- (b) the provisions of this clause 11.2 may be enforced by the Target on behalf of and for the benefit of the current and former officers, employees and Representatives of any member of the Target Group and those persons may plead this clause 11.2 in answer to any claim made by any member of the Bidder Group against them.

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## **12. Warranties and indemnities**

### **12.1 Target warranties**

The Target warrants to the Bidder that, notwithstanding anything contained in any confidentiality agreement between the Target and a member of the Bidder Group, each Target Warranty is true and correct.

### **12.2 Limitation of liability**

The Target is not liable in respect of a Warranty Claim in relation to a Target Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim:

- (a) was required to be done by the Target under the Transaction Documents;
- (b) was approved by the Bidder in writing (prior to the fact, matter, circumstance or act occurring);
- (c) was fairly disclosed in the Disclosure Letter or in any announcement made by the Target to ASX prior to the parties entering into this agreement; or
- (d) has been fairly disclosed in writing by the Target to the Bidder prior to the parties entering into this agreement.

### **12.3 Bidder warranties**

The Bidder warrants to the Target that, notwithstanding anything contained in any confidentiality agreement between the Target and a member of the Bidder Group, each Bidder Warranty is true and correct.

### **12.4 Limitation of liability**

The Bidder is not liable in respect of a Warranty Claim in relation to a Bidder Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim:

- (a) was required to be done by the Bidder under the Transaction Documents;
- (b) was approved by the Target in writing (prior to the fact, matter, circumstance or act occurring);
- (c) was fairly disclosed in the Bidder Disclosure Letter or in any announcement made by the Bidder to ASX prior to the parties entering into this agreement; or
- (d) has been fairly disclosed in writing by the Bidder to the Target prior to the parties entering into this agreement.

### **12.5 Timing of warranties**

Each Bidder Warranty and each Target Warranty is given:

- (a) as at the date of execution of this agreement; and
- (b) at 8.00 am on the Second Court Date,

unless the warranty is expressed to be given only at a particular time in which case it is given as at that time.

## 12.6 Notifications

If a party becomes aware of any fact, matter or circumstance which results in or is reasonably likely to result in a breach of any warranty given by it in this agreement, that party must promptly provide the other party notice describing that fact, matter or circumstance in reasonable detail (provided that nothing in this clause 12.6 obliges a party to make enquiries as to whether any such fact, matter or circumstance has arisen).

## 12.7 Warranties separate and survival

Each Target Warranty and each Bidder Warranty:

- (a) is to be treated as a separate warranty and is not limited by reference to any other warranty or any other provision of this agreement;
- (b) will remain in full force and effect after termination of this agreement and a Warranty Claim is not limited to breaches identified prior to termination.

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## 13. No reliance on due diligence information

### 13.1 Bidder acknowledgement

The Bidder acknowledges and agrees, both on its own behalf and on behalf of the Bidder Indemnified Parties that:

- (a) both prior to and after entry into this agreement, it and its Representatives have undertaken and will undertake their own due diligence investigations into the Target Group and in the course of those investigations and the negotiations and discussions in relation thereto, Target and its Representatives have provided and will provide information in various forms in connection with the Scheme or relating to the Target Group (the **Target Due Diligence Information**);
- (b) none of the Target and its Representatives, to the maximum extent permitted by law:
  - (i) makes any representation or warranty as to the accuracy, completeness or relevance of any of the Target Due Diligence Information, that any of the Target Due Diligence Information has been audited, verified or prepared with reasonable care or that the Target Due Diligence Information is the totality of the information that a person would require in order to consider or evaluate the Scheme;
  - (ii) accepts any responsibility to the Bidder or any other Bidder Indemnified Party or any other person for any false, inaccurate or misleading Target Due Diligence Information or any conclusion drawn or opinion formed by the Bidder or any of its Representatives as a result of examining the Target Due Diligence Information;
  - (iii) accepts any responsibility to inform the Bidder or its Representatives of any matter arising or coming to the notice of the Target which may affect or qualify the Target Due Diligence Information;
  - (iv) is liable for any loss or any kind (including without limitation any consequential or economic loss) arising from any inaccuracy, incompleteness or similar defect in the Target Due Diligence Information or any default, negligence or lack of care in relation to the preparation or provision of the Target Due Diligence Information;



- (c) it has made and relied on its own independent assessment of the Target Due Diligence Information and it has entered into this agreement utilising the Target Due Diligence Information solely at its own risk.

## 13.2 Target acknowledgement

The Target acknowledges and agrees, both on its own behalf and on behalf of the Target Indemnified Parties that:

- (a) both prior to and after entry into this agreement, it and its Representatives have undertaken and will undertake their own due diligence investigations into the Bidder Group and in the course of those investigations and the negotiations and discussions in relation thereto, Bidder and its Representatives have provided and will provide information in various forms in connection with the Scheme or relating to the Bidder Group (the **Bidder Due Diligence Information**);
- (b) none of the Bidder and its Representatives, to the maximum extent permitted by law:
- (i) makes any representation or warranty as to the accuracy, completeness or relevance of any of the Bidder Due Diligence Information, that any of the Bidder Due Diligence Information has been audited, verified or prepared with reasonable care or that the Bidder Due Diligence Information is the totality of the information that a person would require in order to consider or evaluate the Scheme;
  - (ii) accepts any responsibility to the Target or any other Target Indemnified Party or any other person for any false, inaccurate or misleading Bidder Due Diligence Information or any conclusion drawn or opinion formed by the Target or any of its Representatives as a result of examining the Bidder Due Diligence Information;
  - (iii) accepts any responsibility to inform the Target or its Representatives of any matter arising or coming to the notice of the Bidder which may affect or qualify the Bidder Due Diligence Information;
  - (iv) is liable for any loss or any kind (including without limitation any consequential or economic loss) arising from any inaccuracy, incompleteness or similar defect in the Bidder Due Diligence Information or any default, negligence or lack of care in relation to the preparation or provision of the Bidder Due Diligence Information;
- (c) it has made and relied on its own independent assessment of the Bidder Due Diligence Information and it has entered into this agreement utilising the Bidder Due Diligence Information solely at its own risk.

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## 14. Termination

### 14.1 Termination by either party

Either party may terminate this agreement by written notice to the other:

- (a) if the Share Scheme has not become Effective by the End Date;
- (b) at any time before 8.00 am on the Second Court Date if:

- For personal use only
- (i) the other party has materially breached any provision of this agreement (including any warranty);
  - (ii) the party wishing to terminate has given written notice to the other setting out the relevant circumstances of the breach and stating an intention to terminate the agreement; and
  - (iii) the relevant circumstances continue to exist for 5 Business Days (or any shorter period ending at 8.00 am on the Second Court Date) from the time the notice in clause 14.1(b)(ii) is given;
- (c) at any time before 8.00 am on the Second Court Date, if the Independent Expert concludes (whether in its original or any subsequent opinion) that the Share Scheme is not in the best interests of the Scheme Shareholders or (except where the Bidder has notified the Target that it does not wish the Option Scheme to proceed) the Option Scheme is not in the best interests of the Scheme Optionholders;
  - (d) if the Share Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act; or
  - (e) if it is permitted to in accordance with clause 3.10.

#### **14.2 Termination by Bidder**

The Bidder may terminate this agreement by notice in writing to the Target at any time before 8.00 am on the Second Court Date if a Target Director, for any reason:

- (a) fails to recommend as described in clause 7.1;
- (b) makes any public statement or publicly takes any action that contradicts their recommendation;
- (c) qualifies their support for the Schemes, or withdraws their recommendation; or
- (d) recommends against the Schemes.

#### **14.3 Termination by Target**

The Target may terminate this agreement by notice in writing to the Bidder:

- (a) at any time before 8.00 am on the Second Court Date if a majority of the Target Directors have changed, withdrawn or modified their recommendation (as described in clause 7.1) in a circumstances permitted by clause 7.2(a)(i), 7.2(a)(ii) or 7.2(a)(iii); or
- (b) at any time after 8.00 am on the Second Court Date and prior to the Implementation Date if the Bidder suffers an Insolvency Event.

#### **14.4 Written agreement**

The parties may terminate this agreement by another written agreement between them.

#### **14.5 Notice of breach**

Each party must give notice to the other as soon as practicable after it becomes aware of a breach by it of this agreement.

## **14.6 Effect of termination**

If this agreement is terminated then:

- (a) the provisions of this agreement shall cease to have effect except for the provisions of clauses, 1, 8.2, 8.3, 10, 11, 12, this clause 14 and clauses 15 to 21 which will survive termination; and
- (b) each party retains the rights it has against the others in respect of any breach of this agreement occurring before termination.

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## **15. Confidentiality**

### **15.1 Confidentiality agreement**

The Bidder acknowledges and agrees that, subject to clause 15.3, any confidentiality agreement between the Target and a member of the Bidder Group in effect as at the date of this agreement remains in full force and effect in accordance with its terms after the date of this agreement.

### **15.2 Bidder information**

Subject to clause 15.3, the Target must, and must procure that its Representatives, use reasonable endeavours to keep confidential any confidential information relating to the Bidder Group which is provided to the Target or the Target's Representatives after the execution of this agreement.

### **15.3 Permitted disclosure**

The parties agree that any confidential information disclosed to the Bidder under a confidentiality agreement between the Target and a member of the Bidder Group and confidential information relating to the Bidder (as described in clause 15.2) may be disclosed by the Bidder and the Target respectively where:

- (a) disclosure is reasonably required to enable a party to perform its obligations under this agreement or for the purpose of implementing the Schemes or the Transaction (including preparing the Explanatory Memorandums);
- (b) disclosure is required to be made by law or the rules of a recognised stock or securities exchange and the party whose obligation it is to keep matters confidential or procure that those matters are kept confidential:
  - (i) has not through any voluntary act or omission (other than the execution of this agreement) caused the disclosure obligation to arise; and
  - (ii) has, where practicable to do so, before disclosure is made notified each other party of the requirement to disclose and, where the relevant law or rules permit and, where practicable to do so, given each other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (c) disclosure is made by way of a written announcement the terms of which have been agreed in writing by the parties prior to the making of the announcement;
- (d) disclosure is made to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by the Transaction Documents or to the auditor of a party;

- (e) the prior written approval of each party other than the party whose obligation it is to keep those matters confidential or procure that those matters are kept confidential has been obtained; or
- (f) the information has come into the public domain otherwise than as a result of a breach by any party of this agreement.

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## **16. Payments**

### **16.1 Direction**

Any reference in this agreement to a payment to any party includes payment to another person at the direction of that party.

### **16.2 Method of payment**

Payment of any amount due under this agreement by any party must be made by the paying party to the recipient party by:

- (a) electronic funds transfer to an account with an Australian bank specified by the recipient party to the paying party at least 3 Business Days before the due date for payment and confirmed by the paying party to the recipient party by notice; or
- (b) otherwise, unendorsed bank cheque drawn on an Australian bank or other immediately available funds.

### **16.3 Payment of Share Scheme Consideration**

The Bidder must provide or procure the provision of the Share Scheme Consideration in accordance with clause 5.3 of the Share Scheme.

### **16.4 Payment of Option Scheme Consideration**

The Bidder must provide or procure the provision of the Option Scheme Consideration in accordance with clause 5.3 of the Option Scheme.

### **16.5 No deduction**

Any payment to be made under this agreement must be made free and clear of any deduction or withholding, except where that deduction or withholding is required or compelled by law.

### **16.6 Gross-up for withholdings**

Any person who is required or compelled by law to make any deduction or withholding from any amount payable by one party to another under this agreement must, to the extent permitted by law, pay to the payee an additional amount sufficient to ensure that the amount received by the payee equals the full amount that would have been received by the payee, if that deduction or withholding had not been required or compelled.

### **16.7 Default interest**

If any party (the **Payor**) fails to make a payment to any other party (the **Payee**) under this agreement on or before the due date for payment, then, without limiting any other remedy of the Payee, the Payor must pay to the Payee upon demand interest on the due amount calculated at the rate which is 2% above the Standard Rate, with interest to accrue from the due date to the day immediately before the actual date of payment, calculated daily on the basis of a 365 day year and capitalised monthly.

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## **17. GST**

### **17.1 Interpretation**

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 17 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 17; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 17.

### **17.2 Reimbursements and similar payments**

Any payment or reimbursement required to be made under this agreement or any other Transaction Document that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

### **17.3 GST payable**

If GST is payable in relation to a supply made under or in connection with this agreement or any other Transaction Document then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply or, if later, within 5 Business Days of the Supplier providing a valid tax invoice to the Recipient.

### **17.4 Variation to GST payable**

If the GST payable in relation to a supply made under or in connection with this agreement or any other Transaction Document varies from the additional amount paid by the Recipient under clause 17.3 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any ruling, advice, document or other information received by the Recipient from the Australian Taxation Office in relation to any supply made under this agreement or any other Transaction Document will be conclusive as to the GST payable in relation to that supply. Any payment, credit or refund under this clause 17 is deemed to be a payment, credit or refund of the additional amount payable under clause 17.3.

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## **18. Notices**

### **18.1 How notice to be given**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post, or facsimile;
- (b) must be in writing;

(c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(i) if to the Target:

Address: 15 Outram Street, West Perth, Western Australia  
6005, Australia

Fax number: +61 8 9481 1378

For the attention of: Company Secretary

(ii) if to the Bidder:

Address: Suite 801, Level 8, 14 Martin Place, Sydney, New  
South Wales 2000, Australia

Fax number: +61 2 8256 4810

For the attention of: Company Secretary

(d) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(e) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number, of the addressee, in accordance with clause 18.1(c).

## 18.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

(a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;

(c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and

(d) (in the case of delivery by hand) on delivery,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

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## 19. Entire agreement

The Transaction Documents constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

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## **20. General**

### **20.1 Amendments**

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

### **20.2 Assignment**

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of each other party.

### **20.3 Consents**

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

### **20.4 Counterparts**

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

### **20.5 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

### **20.6 No merger**

A party's rights and obligations do not merge on completion of any transaction under this agreement.

### **20.7 Severance**

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

### **20.8 Stamp duties**

The Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or contemplated by or made under this agreement;
- (b) must pay to the Target on demand the amount of any Indemnified Loss suffered or incurred by the Target arising out of or in connection with any failure to comply with clause 20.8(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

## **20.9 Waivers**

Without limiting any other provision of this agreement, the parties agree that:

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

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## **21. Governing law and jurisdiction**

### **21.1 Governing law**

This agreement is governed by the law applying in Western Australia, Australia.

### **21.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 21.2(a).



## Schedule 1 Timetable

Event	Date
Target lodges draft Explanatory Memorandums with ASIC	30 November 2010
First Court Date	No later than 24 December 2010
Dispatch of Explanatory Memorandums completed	No later than 31 December 2010
Share Scheme Meeting	No later than 31 January 2011
Option Scheme Meeting	No later than 31 January 2011
Second Court Date	No later than 4 February 2011 (or as soon as possible after all of the Regulatory Conditions have been satisfied, if later)
Effective Date	On or within 1 Business Day after the Second Court Date
Record Date	5 Business Days after the Effective Date
Implementation Date	5 Business Days after the Record Date

## Schedule 2 Target Prescribed Occurrences

1. The Target converting all or any of its shares into a larger or smaller number of shares.
2. Any member of the Target Group (other than a direct or indirect wholly-owned subsidiary of the Target) resolving to reduce its capital in any way or re-classifying, combining, splitting, redeeming or re-purchasing directly or indirectly any of its shares.
3. Any member of the Target Group (other than a direct or indirect wholly-owned subsidiary of the Target):
  - (a) entering into a buy-back agreement; or
  - (b) resolving to approve the terms of a buy-back agreement under the Corporations Act.
4. Any member of the Target Group issuing shares, or granting an option over its shares or agreeing to make such an issue or grant such an option (other than in respect of exercise of a Target Option on issue, or Target Performance Right in existence, as at the date of this agreement).
5. Any member of the Target Group issuing, or agreeing to issue, convertible notes or any other security convertible into shares.
6. Any member of the Target Group (other than a direct or indirect wholly-owned subsidiary of the Target) agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members.
7. Any member of the Target Group disposing, or agreeing to dispose, of:
  - (a) the whole, or a substantial part, of its business or property; or
  - (b) any legal, beneficial or economic interest or right in, or in connection with, any exploration or mining tenement.
8. Any member of the Target Group creating or agreeing to create any mortgage, charge, lien or other encumbrance over, or declare itself the trustee of, the whole, or a substantial part, of its business or property otherwise than in the ordinary course of business.
9. An application being made to court or a resolution being passed or an order is made for the winding up or dissolution of any member of the Target Group.
10. A receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer being appointed in respect of any member of the Target Group or any of its assets.
11. Any member of the Target Group proposing or taking any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them (other than the Option Scheme).
12. The Target making or proposing to make any change to its constitution.
13. Any member of the Target Group, other than in the ordinary course of business:
  - (a) increasing the remuneration of, or paying any bonus, or otherwise varying the employment arrangements with, any of its directors or executives;
  - (b) accelerating the rights of any of its directors or executives to benefits of any kind;  
or

(c) paying or agreeing to pay a director or executive a termination payment (including a "golden parachute").

14. Any member of the Target Group incurring any financial indebtedness, including by entering into any gold hedging arrangements additional to those in place as at the date of this agreement.
15. Any member of the Target Group entering into any Guarantee or indemnity on behalf of any person or providing security for the obligations of any person except in the ordinary course of business.
16. Any member of the Target Group paying any retirement allowance or superannuation benefit to any director or employee, except for any payment required by law or any payment made in the ordinary course of business.
17. Any member of the Target Group authorising, or agreeing conditionally or otherwise to do, any of the things referred to in this Schedule 2.

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### Schedule 3 Target Warranties

1. The Target is a company properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation, has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this agreement and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.
2. Each Transaction Document constitutes (or will when executed constitute) valid legal and binding obligations of the Target and is enforceable against the Target in accordance with their respective terms.
3. The execution, delivery and performance of each Transaction Document by the Target does not and will not result in a breach of or constitute a default under:
  - (a) any agreement to which the Target is party;
  - (b) any provision of the constitution of the Target; or
  - (c) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which the Target is bound.
4. None of the following events has occurred in relation to the Target:
  - (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Target or any of its assets or anyone else is appointed who (whether or not as agent for the Target) is in possession, or has control, of any of the Target's assets for the purpose of enforcing a charge;
  - (b) an event occurs that gives any person the right to seek an appointment referred to in paragraph (a);
  - (c) an application is made to court (unless it is frivolous or struck out or withdrawn within 3 Business Days) or a resolution is passed or an order is made for the winding up or dissolution of the Target;
  - (d) the Target proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
  - (e) the Target stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or the Target Board resolves that the Target is, or is likely to become at some future time, insolvent;
  - (f) any person in whose favour the Target has granted any Encumbrance becomes entitled to enforce any security under that Encumbrance or any floating charge under that Encumbrance crystallises; or
  - (g) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (f).
5. The Target is not in breach of its continuous disclosure obligations under the Corporations Act or the Listing Rules and, as at the date of this agreement, the Target is not relying on the exception to Listing Rule 3.1 in Listing Rule 3.1A to withhold any information from ASX (other than the fact of its discussions with the Bidder in relation to the Transaction) that has not been disclosed in the Disclosure Letter.

6. All information contained in the Disclosure Letter is true and correct in all material respects and not misleading or deceptive in any material respect (whether by omission or otherwise).
7. As at the date of this agreement:
- (a) there are 103,520,259 Target Shares on issue and those shares have been validly issued and are fully paid up;
  - (b) there are 7,191,000 Target Options on issue;
  - (c) there are 500,000 Target Performance Rights on issue;
  - (d) other than pursuant to the Target Options and Target Performance Rights, no person has any right to require the issue of any shares or other securities in any member of the Target Group (or may, by virtue of an option vesting or otherwise, ever have that right) and no member of the Target Group has made any offer that may result in any person having such a right;
  - (e) all of the shares in the Subsidiaries of the Target are legally and beneficially owned by the Target and those shares have been validly issued and are fully paid up;
  - (f) there is no Encumbrance, option, right of pre-emption, right of first or last refusal or other third party right over any of the Target Shares (in each case, created by the Target) or any of the shares in the Subsidiaries of the Target;
  - (g) no member of the Target Group has in place any plans or schemes relating to the provision of shares, options or other equity entitlements to officers or employees of that member; and
  - (h) no member of the Target Group has given any commitment to any officer or employee of that member in relation to a change of ownership of the Target.
8. As at the time the Explanatory Memorandums or supplementary disclosure is dispatched to Target Shareholders and Target Optionholders (as applicable), the information contained in the Explanatory Memorandums or supplementary disclosure (other than the Bidder Information) is true and correct in all material respects, complies with all applicable laws, does not contain any statement which is materially misleading or deceptive and does not contain any material omission.
9. Other than in relation to the estimated costs as set out in the Disclosure Letter, the Target has no arrangement with any corporate or financial adviser under which the Target has agreed to pay a fee to that adviser if the Schemes do not become Effective, or if the Schemes do become Effective.
10. As at the date of this agreement, each Target Director in office as at the date of this agreement has informed the Target that they:
- (a) will take such action as necessary (including resigning from office and approving all necessary resolutions) to enable the Target to comply with its obligations under clause 5.10;
  - (b) will only act contrary to the advice referred to in paragraph (a) if they consider it reasonably necessary having regard to their fiduciary or statutory obligations at the time of acting (or failing to act);
  - (c) support the Schemes and the Transaction and will act in accordance with clauses 7.1 and 7.2; and

- (d) intend to vote in favour of the Schemes any Target Shares and Target Options in which they have a Relevant Interest and in respect of which they have power to vote, subject to the qualifications set out in clauses 7.2(a)(iii), 7.3(a)(i) and 7.3(a)(ii) and will act in accordance with clauses 7.3 and 7.4.

11. Prior to entering into this agreement the Target and the Target Board received external legal advice on this agreement including on the operation of clauses 9 and 10.

12. The Target and the Target Board consider clauses 9 and 10 to be fair and reasonable, and that it is appropriate to agree to the terms in clauses 9 and 10 in order to secure the benefits to the Target, Target Shareholders and Target Optionholders resulting from the Schemes.

13. As at the date of this agreement:

- (a) neither the Target nor any of its Representatives is in discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
- (b) the Target has, and its Representatives have, ceased all prior discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal.

14. The Target Group is the sole beneficial owner of the Tenements.

15. The Tenements are:

- (a) in good standing in terms of the Mining Act 1971 (SA) and the Mining Act 1978 (WA) (as applicable) and all other relevant legislation; and
- (b) not liable to cancellation, suspension of forfeiture for any reason and are not subject to any outstanding claims for compensation.

16. The Target Group currently holds, and complies with the material terms and conditions of, all licences, authorisations and access rights or arrangements required to conduct its Business in South Australia and Western Australia.

## Schedule 4 Bidder Prescribed Occurrences

1. The Bidder converting all or any of its shares into a larger or smaller number of shares.
2. Any member of the Bidder Group (other than a direct or indirect wholly-owned subsidiary of the Bidder) resolving to reduce its capital in any way or re-classifying, combining, splitting, redeeming or re-purchasing directly or indirectly any of its shares.
3. Any member of the Bidder Group (other than a direct or indirect wholly-owned subsidiary of the Bidder):
  - (a) entering into a buy-back agreement; or
  - (b) resolving to approve the terms of a buy-back agreement under the Corporations Act.
4. Any member of the Bidder Group issuing shares, or granting an option over its shares or agreeing to make such an issue or grant such an option, other than pursuant to the Schemes.
5. Any member of the Bidder Group issuing, or agreeing to issue, convertible notes or any other security convertible into shares.
6. Any member of the Bidder Group (other than a direct or indirect wholly-owned subsidiary of the Bidder) agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members.
7. Any member of the Bidder Group disposing, or agreeing to dispose, of:
  - (a) the whole, or a substantial part, of its business or property; or
  - (b) any legal, beneficial or economic interest or right in, or in connection with, any exploration or mining tenement.
8. Any member of the Bidder Group creating or agreeing to create any mortgage, charge, lien or other encumbrance over, or declare itself the trustee of, the whole, or a substantial part, of its business or property otherwise than in the ordinary course of business.
9. An application being made to court or a resolution being passed or an order is made for the winding up or dissolution of any member of the Bidder Group.
10. A receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar officer being appointed in respect of any member of the Bidder Group or any of its assets.
11. Any member of the Bidder Group proposing or taking any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them.
12. The Bidder making or proposing to make any change to its constitution.
13. Any member of the Bidder Group authorising, or agreeing conditionally or otherwise to do, any of the things referred to in this Schedule 4.

## Schedule 5 Bidder Warranties

1. The Bidder is a company properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation, has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this agreement and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.
2. Each Transaction Document constitutes (or will when executed constitute) valid legal and binding obligations of the Bidder and is enforceable against the Bidder in accordance with their respective terms.
3. The execution, delivery and performance of each Transaction Document by the Bidder does not and will not result in a breach of or constitute a default under:
  - (a) any agreement to which the Bidder is party;
  - (b) any provision of the articles of association of the Bidder; or
  - (c) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which the Bidder is bound.
4. None of the following events has occurred in relation to the Bidder:
  - (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of the Bidder or any of its assets or anyone else is appointed who (whether or not as agent for the Bidder) is in possession, or has control, of any of the Bidder's assets for the purpose of enforcing a charge;
  - (b) an event occurs that gives any person the right to seek an appointment referred to in paragraph (a);
  - (c) an application is made to court (unless it is frivolous or struck out or withdrawn within 3 Business Days) or a resolution is passed or an order is made for the winding up or dissolution of the Bidder;
  - (d) the Bidder proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;
  - (e) the Bidder stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or the Bidder Board resolves that the Bidder is, or is likely to become at some future time, insolvent;
  - (f) any person in whose favour the Bidder has granted any Encumbrance becomes entitled to enforce any security under that Encumbrance or any floating charge under that Encumbrance crystallises; or
  - (g) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (f).
5. All information contained in the Bidder Disclosure Letter is true and correct in all material respects and not misleading or deceptive in any material respect (whether by omission or otherwise).
6. As at the date of this agreement:
  - (a) there are 101,087,786 Bidder Shares on issue and those shares have been validly issued and are fully paid up;



- (b) there are 1,685,116 unlisted options to acquire Bidder Shares on issue; and
- (c) other than pursuant to the 1,685,116 unlisted options to acquire Bidder Shares, no person has any right to require the issue of any shares or other securities in any member of the Bidder Group (or may, by virtue of an option vesting or otherwise, ever have that right) and no member of the Bidder Group has made any offer that may result in any person having such a right.

7. The Bidder Information provided to the Target for inclusion in the Explanatory Memorandums:

- (a) at the time it was provided, was provided in good faith and on the understanding that each of the Target Indemnified Parties will rely on that information to prepare the Explanatory Memorandums or supplementary disclosure to Target Shareholders and Target Optionholders (as applicable) and to propose and implement the Schemes; and
- (b) at the time the Target commenced dispatch of the Explanatory Memorandums or supplementary disclosure to Target Shareholders and Target Optionholders (as applicable), is true and correct in all material respects, complies with all applicable laws, does not contain any statement which is materially misleading or deceptive and does not contain any material omission.

8. The Bidder is not in breach of its continuous disclosure obligations under the Corporations Act or the Listing Rules and, as at the date of this agreement, the Bidder is not relying on the exception to Listing Rule 3.1 in Listing Rule 3.1A to withhold any information from ASX (other than the fact of its discussions with the Target in relation to the Transaction) that has not been disclosed in the Bidder Disclosure Letter.

9. The Bidder Group is the sole beneficial owner of the Bidder Tenements.

10. The Bidder Tenements are:

- (a) in good standing in terms of relevant legislation in the Kingdom of Thailand; and
- (b) not liable to cancellation, suspension or forfeiture for any reason and are not subject to any outstanding claims for compensation.

11. The Bidder Group currently holds, and complies with the material terms and conditions of, all licences, authorisations and access rights or arrangements required to conduct its operations in the Kingdom of Thailand.

12. The ownership of Akara Mining Limited is in accordance with applicable legislation including the Thai Foreign Business Act.

## Schedule 6 Option Scheme Consideration

The Option Scheme Consideration will be calculated as follows:

1. Option Scheme Consideration will be in the form of New Bidder Shares with the number offered set by reference to the Share Scheme Consideration of 0.31 New Bidder Shares per Target Share.
2. The number of New Bidder Shares to be provided for each Scheme Option will be calculated according to the following formula (regardless of whether the Scheme Option has a strike price above, below or equal to the Share Scheme Consideration):

$$N = A \div B$$

where:

N = New Bidder Shares per Scheme Option;

A = the Australian dollar value of the Scheme Option according to the Black Scholes option pricing formula. For the Black Scholes formula:

- (i) the valuation date must be the date of this agreement;
- (ii) the annualised volatility assumption will be set at 50%; and
- (iii) the spot price of Target Shares will be the implied Australian dollar value of the Share Scheme Consideration on the date of this agreement, where the value of Bidder Shares used to determine the implied value of the Share Scheme Consideration is to be the volume weighted average price of Bidder Shares on ASX for the 5 full trading days preceding the date of this agreement; and

B = the volume weighted average price of Bidder Shares on ASX for the 5 full trading days preceding the date of this agreement.

**Executed** as an agreement.

**Executed by Dominion Mining Ltd ABN 37 000 660 864** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

**Executed by Kingsgate Consolidated Limited ABN 42 000 837 472** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

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**Annexure A Share Scheme**

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## Scheme of arrangement made under section 411 of the Corporations Act

**Parties**                    **Dominion Mining Ltd ABN 37 000 660 864** of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**)

**Each person registered as a holder of fully paid ordinary shares in the capital of the Target at the Record Date**

### Background

- A.        The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this scheme to Target Shareholders and each of the Target and the Bidder have agreed to take certain steps to give effect to this scheme.
- B.        If this scheme becomes Effective, the Bidder will provide or procure the provision of the Share Scheme Consideration to the Scheme Shareholders in accordance with the provisions of this scheme, and the Bidder will acquire all Scheme Shares.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this scheme:

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

**ASX** means, as the context requires, ASX Limited ABN 98 008 624 691 or the securities market conducted by ASX Limited.

**Bidder** means Kingsgate Consolidated Limited ABN 42 000 837 472 of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia.

**Bidder Share Register** means the register of members of the Bidder maintained by or on behalf of the Bidder in accordance with section 168(1) of the Corporations Act.

**Bidder Share Registry** means Security Transfer Registrars Pty Ltd, 770 Canning Highway, Applecross, Western Australia 6153, Australia.

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

**Business Day** means a business day as defined in the Listing Rules.

**CHESS** means the Clearing House Electronic Subregister System for the electronic transfer of Target Shares and other financial products operated by ASX Settlement Pty Limited ABN 49 008 504 532.

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

**Court** means the [Federal Court of Australia/Supreme Court of Western Australia].

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

**Effective Date** means the date on which this scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**End Date** means the date 6 months after the date of the Implementation Agreement.

**Implementation Agreement** means the scheme implementation agreement dated 20 October 2010 between the Target and the Bidder.

**Implementation Date** means the date which is 2 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address shown in the Target Share Register on the Record Date is a place outside Australia and its external territories unless the Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Shareholder with New Bidder Shares when this scheme becomes Effective.

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

**Marketable Parcel** means a marketable parcel as defined by the market rules of ASX.

**New Bidder Share** means a fully paid ordinary shares in the capital of the Bidder to be provided to Scheme Shareholders under this scheme.

**Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date or such other time and date (after the Effective Date) as the Bidder and the Target agree in writing.

**Registered Address** means, in relation to a Scheme Shareholder, the address of the Scheme Shareholder as recorded in the Target Share Register.

**Sale Agent** means a person appointed by the Bidder to sell the New Bidder Shares that are attributable to Ineligible Foreign Shareholders under this scheme.

**Scheme Share** means a Target Share on issue on the Record Date.

**Scheme Shareholder** means each person who holds Scheme Shares.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Share Deed Poll** means the deed poll dated [ \* ] executed by the Bidder in favour of the Scheme Shareholders.

**Share Scheme Consideration** means 0.31 New Bidder Shares for each Scheme Share.

**Share Scheme Meeting** means the meeting to be convened by the Court in relation to this scheme pursuant to section 411(1) of the Corporations Act.

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

**Target ESOP** means the Target Employee Share Option Plan.

**Target Options** means an option to acquire one unissued Target Share issued under the Target ESOP or the Target Long Term Incentive Plan.

**Target Shareholder** means a person who is registered in the Target Share Register as a holder of Target Shares.

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

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Registries Limited of Level 7, 207 Kent Street, Sydney, New South Wales 2000, Australia.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

## 1.2 Business Days

If the day on which any act to be done under this scheme is a day other than a Business Day, that act must be done on or by the next Business Day except where this scheme expressly specifies otherwise.

## 1.3 Listing rules are law

A listing rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this scheme.

## 1.4 General rules of interpretation

In this scheme headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this scheme, and a reference to this scheme includes all schedules, exhibits, attachments and annexures to it;

- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or **dollar** is to Australian currency;
- (k) a reference to time is to Sydney, Australia time; and
- (l) this scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## **2. Preliminary matters**

### **2.1 Target**

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Target is admitted to the official list of ASX and Target Shares are officially quoted on ASX. As at [\*], the Target had the following securities on issue:
- (i) 103,520,259 Target Shares;
  - (ii) 7,191,000 Target Options; and
  - (iii) 500,000 Target performance rights.

### **2.2 Bidder**

- (a) The Bidder is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Bidder is admitted to the official list of ASX and Bidder Shares are officially quoted on ASX.

### **2.3 Implementation Agreement**

The Bidder and the Target have agreed, by executing the Implementation Agreement, to implement this scheme.

### **2.4 Share Deed Poll**

The Bidder has agreed, by executing the Share Deed Poll, to perform its obligations under this scheme, including the obligation to provide or procure the provision of the Share Scheme Consideration to the Scheme Shareholders.



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### **3. Conditions precedent**

#### **3.1 Conditions**

- (a) This scheme is conditional on:
- (i) all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) having been satisfied or waived in accordance with the terms of the Implementation Agreement by 8.00 am on the Second Court Date;
  - (ii) the Implementation Agreement not having been terminated in accordance with its terms before 8.00 am on the Second Court Date;
  - (iii) approval of this scheme by the Court under section 411(4)(b) of the Corporations Act, including with such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder, having been satisfied;
  - (iv) the orders of the Court made under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act approving this scheme coming into effect, under section 411(10) of the Corporations Act; and
  - (v) the condition in clause 3.1(n) of the Implementation Agreement having been satisfied or waived in accordance with the terms of the Implementation Agreement.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) is a condition precedent to the operation of clauses 4.3 and 5.
- (c) This scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

#### **3.2 Certificate in relation to conditions**

The Target and the Bidder must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming whether or not as at 8.00 am on the Second Court Date all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) have been satisfied or waived.

#### **3.3 Conclusive evidence**

The giving of a certificate by the Target and the Bidder under clause 3.2 will be conclusive evidence of the matters referred to in the certificate.

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### **4. Implementation**

#### **4.1 Lodgement of Court orders**

The Target must lodge with ASIC an office copy of any Court orders under section 411(10) of the Corporations Act approving this scheme by 6.00 pm on the Business Day the Court approves this scheme or by 6.00 pm on the Business Day on which the Court orders are entered, whichever is later.

## 4.2 Consequences of this scheme becoming Effective

If this scheme becomes Effective:

- (a) it will override the constitution of the Target, to the extent of any inconsistency;
- (b) the Bidder must (pursuant to its obligations under the Share Deed Poll) provide or procure the provision of the Share Scheme Consideration in the manner contemplated by clause 5.3;
- (c) subject to the provision of the Share Scheme Consideration under clause 4.2(b), all the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares) will be transferred to the Bidder; and
- (d) the Target will enter the name of the Bidder in the Target Share Register in respect of all the Scheme Shares.

## 4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Share Scheme Consideration in the manner contemplated by clause 5.3 and the Bidder providing the Target with written confirmation of that provision, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its officers as agent and attorney of the Scheme Shareholders under clause 8.4 or otherwise) by:
  - (i) the Target delivering to the Bidder a duly completed and executed share transfer form to transfer all the Scheme Shares to the Bidder; and
  - (ii) the Bidder duly executing such transfer form and delivering it to the Target for registration; and
- (b) immediately after receipt of the transfer form in accordance with clause 4.3(a)(ii), the Target must enter the name of the Bidder in the Target Share Register in respect of the Scheme Shares.

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## 5. Share Scheme Consideration

### 5.1 Amount of Share Scheme Consideration

Each Scheme Shareholder is entitled to receive the Share Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### 5.2 Fractional entitlement

If the number of Scheme Shares held by a Scheme Shareholder is such that an entitlement of that Scheme Shareholder to New Bidder Shares is not a whole number then any fractional entitlement will:

- (a) where the entitlement is to half a New Bidder Share or more, be rounded up to the nearest whole number of New Bidder Shares; and
- (b) where the entitlement is to less than half a New Bidder Share, be rounded down to the nearest whole number of New Bidder Shares.

### 5.3 Provision of Share Scheme Consideration

Subject to clauses 5.3(c), 5.4, 5.5, 5.6 and 5.7, the obligation of the Bidder to provide the Share Scheme Consideration to Scheme Shareholders will be satisfied by the Bidder:

- (a) in the case of Share Scheme Consideration that is required to be provided to Scheme Shareholders, by the Bidder procuring that:
  - (i) the name and address of each such Scheme Shareholder is entered into the Bidder Share Register on the Implementation Date in respect of the New Bidder Shares to which it is entitled under this clause 5; and
  - (ii) a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Shareholder representing or stating, as applicable, the number of New Bidder Shares to be provided to the Scheme Shareholder pursuant to this scheme.
- (b) in the case of Share Scheme Consideration that is required to be provided to the Sale Agent as a result of the operation of clause 5.4, by the Bidder procuring that:
  - (i) the name and registered address of the Sale Agent, as nominee in trust for the Ineligible Foreign Shareholders, is entered into the Bidder Register on the Implementation Date in respect of the New Bidder Shares required to be provided to it under this clause 5;
  - (ii) a share certificate or holding statement (or equivalent document) in the name of the Sale Agent, as nominee in trust for the Ineligible Foreign Shareholders, is sent to the Sale Agent representing or stating, as applicable, the number of New Bidder Shares so provided to it; and
  - (iii) the Sale Agent, as nominee in trust for the Ineligible Foreign Shareholders, sells those New Bidder Shares, and pays or procures the payment of the proceeds in accordance with clause 5.7; and
- (c) in the case of joint holders of Scheme Shares:
  - (i) the New Bidder Shares to be provided under this scheme will be provided to and registered in the names of the joint holders (or the Sale Agent, as applicable);
  - (ii) any cheque required to be sent under clause 5.7 will be made payable to the joint holders and sent to the holder whose name appears first in the Target Share Register on the Record Date; and
  - (iii) any other document required to be sent under this clause 5 must be forwarded to the holder whose name appears first in the Target Share Register on the Record Date

### 5.4 Ineligible Foreign Shareholders

The Bidder has no obligation to provide, and will not provide, any New Bidder Shares to any Ineligible Foreign Shareholder under this scheme and, instead, must procure that those New Bidder Shares which, but for this clause 5.4, would be required to be provided to Ineligible Foreign Shareholders are dealt with on behalf of the Ineligible Foreign Shareholders in accordance with clause 5.7.

## 5.5 Share splitting

If the Bidder and the Target are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, before the Record Date, been party to a shareholding splitting or division or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Share Scheme Consideration, the Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and registered addresses of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after the notice has been so given, the Scheme Shareholder specifically identified in the notice shall, for the purposes of the Share Scheme, be taken to hold all those Scheme Shares and each of the other Scheme Shareholders whose names are set out in the notice shall, for the purposes of the Share Scheme, be taken to hold no Scheme Shares.

## 5.6 Anti-manipulation

If the Bidder and the Target are of the opinion that a Scheme Shareholder or other person has, before the Record Date:

- (a) been party to an arrangement resulting in a change in the registered address of the Scheme Shareholder to a jurisdiction so as to make that Scheme Shareholder (the relevant Scheme Shareholder) an Ineligible Foreign Shareholder or a transfer of Target Shares by the person to a person (also the relevant Scheme Shareholder) who would be an Ineligible Foreign Shareholder;
- (b) in circumstances where the Bidder and the Target are of the opinion that the arrangement or transfer was undertaken to achieve that result in order to maximise the cash consideration payable to the relevant Scheme Shareholder,

the Bidder may give notice to the relevant Scheme Shareholder prior to the Implementation Date:

- (c) setting out the name of the relevant Scheme Shareholder and the other persons involved;
- (d) stating that opinion; and
- (e) stating what, in its opinion, would have been the holdings and registered addresses at which the Scheme Shares held by the relevant Scheme Shareholder would have been held had the arrangement or transfer not been undertaken,

and after the notice has been so given, the Scheme Shares held by the relevant Scheme Shareholder shall be taken to be held in the holdings and registered addresses specified in notice.

## 5.7 Sale Agent

- (a) New Bidder Shares that are required to be dealt with under this clause by virtue of clause 5.4 must be provided by the Bidder to the Sale Agent, as nominee in trust for

the Ineligible Foreign Shareholders, on the Implementation Date and subsequently sold in accordance with the remaining provisions of this clause 5.7.

- (b) The Bidder must procure that the Sale Agent:
- (i) as soon as practicable after the Implementation Date, sells the New Bidder Shares provided to it pursuant to clause 5.7(a), in the ordinary course of trading on ASX; and
  - (ii) remits to the Bidder the proceeds of sale (**Share Proceeds**).
- (c) Promptly after receiving the entire Share Proceeds in accordance with clause 5.7(b)(b)(i), the Bidder must pay, or procure the payment, to each Ineligible Foreign Shareholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:
- $$A = (B \div C) \times D$$
- where
- B = the number of New Bidder Shares that would have been provided to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder;
- C = the total number of New Bidder Shares which would otherwise have been provided to all Ineligible Foreign Shareholders collectively and which were instead issued to the Sale Agent; and
- D = the Share Proceeds.
- (d) The Bidder must make payments, or must procure that payments are made, to Ineligible Foreign Shareholders under clause 5.7(c) by:
- (i) sending (or procuring the Bidder Share Registry to send) it to the Ineligible Foreign Shareholder's Registered Address by cheque in Australian currency; or
  - (ii) if the Ineligible Foreign Shareholder has a payment direction (that is currently used for the payment of dividends) for a bank account with any Australian ADI (as defined in the Corporations Act) recorded in the Target Share Register as at the Record Date, depositing (or procuring the Bidder Share Registry to deposit) it into that account.
- (e) Payment of an amount to an Ineligible Foreign Shareholder under this clause 5.7 will be in full satisfaction of the obligations of the Bidder to the Ineligible Foreign Shareholder under this scheme in respect of that Ineligible Foreign Shareholder's Share Scheme Consideration.
- (f) If the Bidder receives professional advice that any Tax is required by law to be withheld from any such payment, the Bidder must ensure, or must procure, that the relevant amount is withheld before making the payment to the Ineligible Foreign Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this scheme). The Bidder must ensure, or must procure, that any amount so withheld is paid to the relevant taxation authorities within the time permitted by law, and that a receipt or other appropriate evidence of such payment is promptly provided to the relevant Ineligible Foreign Shareholder.

- (g) None of the Target, the Bidder or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares by the Sale Agent. The sale of New Bidder Shares under this clause 5.7 will be at the risk of the Ineligible Foreign Shareholder.
- (h) Each Ineligible Foreign Shareholder appoints the Target as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Shareholders under the Corporations Act.

## **5.8 Status of New Bidder Shares**

Subject to this scheme becoming Effective, the Bidder must:

- (a) provide the New Bidder Shares required to be provided by it under this scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share; and
- (b) ensure that each such New Bidder Share is duly issued, fully paid and free from any Encumbrance.

## **5.9 Unclaimed monies**

- (a) The Bidder may cancel or procure cancellation of a cheque issued under clause 5.7(d)(i) if the cheque:
- (i) is returned to the Bidder or the Sale Agent; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request from a Scheme Shareholder, the Bidder must reissue, or procure the reissue of, a cheque that was previously cancelled under this clause.

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## **6. Dealings in Target Shares**

### **6.1 Dealings in Target Shares by Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Target Shares will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Target Share Register is kept,

and the Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders, any transfer or transmission application in respect of the Target Shares received after such times or received prior to such times but not in registrable form.

## 6.2 Target Share Register

- (a) The Target must maintain the Target Share Register in accordance with the provisions of this clause 6 until the Share Scheme Consideration has been provided to the Scheme Shareholders and the Target Share Register in this form will solely determine entitlements to the Share Scheme Consideration.
- (b) The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.1(b) on the Record Date (provided that for the avoidance of doubt nothing in this clause 6.2(b) requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a Marketable Parcel).
- (c) The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Shares received after the Record Date.
- (d) From the Record Date until the earlier of registration of the Bidder in respect of all Scheme Shares under clause 4.3(b) or the End Date, no Target Shareholder may deal with Target Shares in any way except as set out in this scheme and any attempt to do so will have no effect.

## 6.3 Information to be made available to the Bidder

As soon as practicable after the Record Date and in any event at least 2 Business Days before the Implementation Date, the Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder are available to the Bidder in the form the Bidder reasonably requires.

## 6.4 Effect of share certificates and holding statements

- (a) All certificates and statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of the Bidder and its successors in title).
- (b) As from the Record Date, each entry current at that date on the Target Share Register (other than entries in respect of the Bidder and its successors in title) will cease to have effect except as evidence of entitlement to the Share Scheme Consideration in respect of the Target Shares relating to that entry.

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## 7. Quotation of Target Shares

- (a) The Target will apply to ASX to suspend trading on ASX in Target Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder, the Target will apply:
  - (i) for termination of the official quotation of Target Shares on ASX; and
  - (ii) to have itself removed from the official list of ASX.

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## **8. General scheme provisions**

### **8.1 Consent**

If the Court proposes to approve this scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing.

### **8.2 Agreement of Scheme Shareholders**

Each Scheme Shareholder:

- (a) agrees to the transfer of their Target Shares in accordance with terms of this scheme and agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this scheme;
- (b) acknowledges that this scheme binds the Target and all Scheme Shareholders (including those who do not attend the Share Scheme Meeting or do not vote at that meeting or vote against this scheme at that Share Scheme Meeting);
- (c) who is issued New Bidder Shares under this scheme agrees to become a shareholder of the Bidder in respect of those New Bidder Shares and to be bound by the constitution of the Bidder; and
- (d) who is an Ineligible Foreign Shareholder agrees and acknowledges that the payment to it of an amount in accordance with clause 5.7 constitutes the satisfaction in full of its entitlement to the Share Scheme Consideration.

### **8.3 Warranties by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to the Target in its own right and for the benefit of the Bidder that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this scheme will, on the date they are transferred to the Bidder, be fully paid;
- (b) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this scheme will, on the date they are transferred to the Bidder, be free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind; and
- (c) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to the Bidder.

### **8.4 Authority given to the Target**

Upon this scheme becoming Effective, each Scheme Shareholder without the need for any further act:

- (a) irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
  - (i) enforcing the Share Deed Poll against the Bidder; and



- (ii) executing any document necessary to give effect to this scheme including, a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,

and the Target accepts such appointment; and

- (b) will be deemed to have authorised the Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary to implement this scheme, including executing, as agent and attorney of each Scheme Shareholder, a share transfer or transfers in relation to Scheme Shares as contemplated by clause 8.4(a).

## **8.5 Appointment of sole proxy**

Upon the Share Scheme Consideration being provided to the Scheme Shareholders and until the Target registers the Bidder as the holder of all Target Shares in the Target Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed the Bidder as its attorney and agent (and directed the Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by the Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target Shareholders' resolutions, whether in person, by proxy or by corporate representative;
- (b) undertakes not to otherwise attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as pursuant to clause 8.5(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.5(a), the Bidder and any director, officer, secretary or agent nominated by the Bidder under clause 8.5(a) may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares.

## **8.6 Definition of "sending"**

For the purposes of clause 5.7(d)(i), the expression "sending" means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Record Date by any other means at no cost to the recipient.

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## **9. General**

### **9.1 Stamp duties**

The Bidder must pursuant to their obligations under the Share Deed Poll:

- (a) pay all stamp duties and any related fines and penalties in respect of the transfer of the Scheme Shares to the Bidder and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Shareholder against any liability from a failure to comply with clause 9.1(a).

### **9.2 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this scheme is sent by post to the Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the place where the Target's Share Registry is kept.
- (b) The accidental omission to give notice of the Share Scheme Meeting or the non-receipt of such a notice by any Target Shareholder may not, unless so ordered by the Court, invalidate the Share Scheme Meeting or the proceedings of the Share Scheme Meeting.

### **9.3 Further acts and documents**

The Target must do all further acts and execute and deliver all further documents required by law or necessary to give effect to this scheme and the transactions contemplated by it.

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## **10. Governing law and jurisdiction**

### **10.1 Governing law**

This scheme is governed by the law applying in Western Australia.

### **10.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this scheme; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.2(a).

**Annexure B Option Scheme**

For personal use only

## Scheme of arrangement made under section 411 of the Corporations Act

**Parties**                    **Dominion Mining Ltd ABN 37 000 660 864** of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**)

**Each person registered as a holder of options to acquire fully paid ordinary shares in the capital of the Target at the Record Date**

### Background

- A.        The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this scheme to Target Optionholders and each of the Target and the Bidder have agreed to take certain steps to give effect to this scheme.
- B.        If this scheme becomes Effective, the Bidder will provide or procure the provision of the Option Scheme Consideration to the Scheme Optionholders in accordance with the provisions of this scheme, and all of the Scheme Options will be cancelled.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this scheme:

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

**ASX** means, as the context requires, ASX Limited ABN 98 008 624 691 or the securities market conducted by ASX Limited.

**Bidder** means Kingsgate Consolidated Limited ABN 42 000 837 472 of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia.

**Bidder Share Register** means the register of members of the Bidder maintained by or on behalf of the Bidder in accordance with section 168(1) of the Corporations Act.

**Bidder Share Registry** means Security Transfer Registrars Pty Ltd, 770 Canning Highway, Applecross, Western Australia 6153, Australia.

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

**Business Day** means a business day as defined in the Listing Rules.

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

**Court** means the [Federal Court of Australia/Supreme Court of Western Australia].

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

**Effective Date** means the date on which this scheme becomes Effective.

**End Date** means the date 6 months after the date of the Implementation Agreement.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**Implementation Agreement** means the scheme implementation agreement dated 20 October 2010 between the Target and the Bidder.

**Implementation Date** means the date which is 2 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

**Ineligible Foreign Optionholder** means a Scheme Optionholder whose address shown in the Target Option Register on the Record Date is a place outside Australia and its external territories unless the Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Optionholder with New Bidder Shares when this scheme becomes Effective.

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

**New Bidder Share** means a fully paid ordinary shares in the capital of the Bidder to be provided to Scheme Optionholder under this scheme.

**Option Deed Poll** means the deed poll dated [ \* ] executed by the Bidder in favour of the Scheme Optionholders.

**Option Scheme Consideration** means the consideration payable to Scheme Optionholders as determined in accordance with Schedule 1.

**Option Scheme Meeting** means the meeting to be convened by the Court in relation to this scheme pursuant to section 411(1) of the Corporations Act.

**Record Date** means 7.00 pm on the date which is 5 Business Days after the Effective Date or such other time and date (after the Effective Date) as the Bidder and the Target agree in writing.

**Registered Address** means, in relation to a Scheme Optionholder, the address of the Scheme Optionholder as recorded in the Target Option Register.

**Sale Agent** means a person appointed by the Bidder to sell the New Bidder Shares that are attributable to Ineligible Foreign Optionholders under this scheme.

**Scheme Option** means a Target Option on issue on the Record Date.

**Scheme Optionholder** means each person who holds Scheme Options.

**Scheme Share** means a Target Share on issue on the Record Date.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Share Scheme Consideration** means 0.31 New Bidder Shares for each Scheme Share.

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

**Target Option Register** means the register of option holders of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Optionholder** means a person who is registered in the Target Option Register as a holder of Target Options.

**Target Options** means an option to acquire one unissued Target Share issued under the Dominion Employee Share Option Plan or the Long Term Incentive Plan.

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

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Registries Limited of Level 7, 207 Kent Street, Sydney, New South Wales 2000, Australia.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

## 1.2 Business Days

If the day on which any act to be done under this scheme is a day other than a Business Day, that act must be done on or by the next Business Day except where this scheme expressly specifies otherwise.

## 1.3 Listing rules are law

A listing rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this scheme.

## 1.4 General rules of interpretation

In this scheme headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this scheme, and a reference to this scheme includes all schedules, exhibits, attachments and annexures to it;

- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or **dollar** is to Australian currency;
- (k) a reference to time is to Sydney, Australia time; and
- (l) this scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## 2. Preliminary matters

### 2.1 Target

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Target is admitted to the official list of ASX and Target Shares are officially quoted on ASX. As at [ \* ], the Target had the following securities on issue:
- (i) 103,520,259 Target Shares;
  - (ii) 7,191,000 Target Options; and
  - (iii) 500,000 Target performance rights.

### 2.2 Bidder

- (a) The Bidder is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales.
- (b) The Bidder is admitted to the official list of ASX and Bidder Shares are officially quoted on ASX.

### 2.3 Implementation Agreement

The Bidder and the Target have agreed, by executing the Implementation Agreement, to implement this scheme.

### 2.4 Option Deed Poll

The Bidder has agreed, by executing the Option Deed Poll, to perform its obligations under this scheme, including the obligation to provide or procure the provision of the Option Scheme Consideration to the Scheme Optionholders.

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## 3. Conditions precedent

### 3.1 Conditions

- (a) This scheme is conditional on:

- (i) all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) having been satisfied or waived in accordance with the terms of the Implementation Agreement by 8.00 am on the Second Court Date;
  - (ii) the Implementation Agreement not having been terminated in accordance with its terms before 8.00 am on the Second Court Date;
  - (iii) approval of this scheme by the Court under section 411(4)(b) of the Corporations Act, including with such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder, having been satisfied;
  - (iv) the orders of the Court made under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act approving this scheme coming into effect, under section 411(10) of the Corporations Act; and
  - (v) the condition in clause 3.1(m) of the Implementation Agreement having been satisfied or waived in accordance with the terms of the Implementation Agreement.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) is a condition precedent to the operation of clauses 4.3 and 5.
- (c) This scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

### **3.2 Certificate in relation to conditions**

The Target and the Bidder must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming whether or not as at 8.00 am on the Second Court Date all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the conditions in clauses 3.1(m) and 3.1(n)) have been satisfied or waived.

### **3.3 Conclusive evidence**

The giving of a certificate by the Target and the Bidder under clause 3.2 will be conclusive evidence of the matters referred to in the certificate.

---

## **4. Implementation**

### **4.1 Lodgement of Court orders**

The Target must lodge with ASIC an office copy of any Court orders under section 411(10) of the Corporations Act approving this scheme by 6.00 pm on the Business Day the Court approves this scheme or by 6.00 pm on the Business Day on which the Court orders are entered, whichever is later.

### **4.2 Consequences of this scheme becoming Effective**

If this scheme becomes Effective:

- (a) it will override the constitution of the Target, to the extent of any inconsistency;
- (b) the Bidder must (pursuant to its obligations under the Option Deed Poll) provide or procure the provision of the Option Scheme Consideration in the manner contemplated by clause 5.3; and



- (c) subject to the provision of the Option Scheme Consideration under clause 4.2(b), all the Scheme Options (together with all rights, entitlements and obligations attaching to the Scheme Options) will be cancelled.

### **4.3 Cancellation of Scheme Options**

On the Implementation Date, subject to the provision of the Option Scheme Consideration in the manner contemplated by clause 5.3 and the Bidder providing the Target with written confirmation of that provision, all of the Scheme Options, together with all rights, entitlements and obligations attaching to them as at the Implementation Date, will be cancelled and extinguished, without the need for any further act by any Scheme Optionholder, and the Scheme Optionholder:

- (a) releases the Target from all obligations in relation to those Scheme Options;
- (b) release and waives any and all rights the Scheme Optionholder may have had (including to be issued Target Shares) in relation to those Scheme Options; and
- (c) authorises the Target to update the Target Option Register recording the cancellation of the Target Options that constitute the Scheme Options.

---

## **5. Option Scheme Consideration**

### **5.1 Amount of Option Scheme Consideration**

Each Scheme Optionholder is entitled to receive the Option Scheme Consideration in respect of each Scheme Option held by that Scheme Optionholder.

### **5.2 Fractional entitlement**

If the number of Scheme Options held by a Scheme Optionholder is such that an entitlement of that Scheme Optionholder to New Bidder Shares is not a whole number then any fractional entitlement will:

- (a) where the entitlement is to half a New Bidder Share or more, be rounded up to the nearest whole number of New Bidder Shares; and
- (b) where the entitlement is to less than half a New Bidder Share, be rounded down to the nearest whole number of New Bidder Shares.

### **5.3 Provision of Option Scheme Consideration**

Subject to clauses 5.3(c), 5.4 and 5.5, the obligation of the Bidder to provide the Option Scheme Consideration to Scheme Optionholders will be satisfied by the Bidder:

- (a) in the case of Option Scheme Consideration that is required to be provided to Scheme Optionholders, by the Bidder procuring that:
  - (i) the name and address of each such Scheme Optionholder is entered into the Bidder Share Register on the Implementation Date in respect of the New Bidder Shares to which the Scheme Optionholder is entitled under this clause 5; and
  - (ii) a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each Scheme Optionholder representing or stating, as applicable, the number of New Bidder Shares to be provided to the Scheme Optionholder pursuant to this scheme;

- (b) in the case of Option Scheme Consideration that is required to be provided to the Sale Agent as a result of the operation of clause 5.4, by the Bidder procuring that:
- (i) the name and registered address of the Sale Agent, as nominee in trust for the Ineligible Foreign Optionholders, is entered into the Bidder Register on the Implementation Date in respect of the New Bidder Shares required to be provided to the Sale Agent under this clause 5;
  - (ii) a share certificate or holding statement (or equivalent document) in the name of the Sale Agent, as nominee in trust for the Ineligible Foreign Optionholders, is sent to the Sale Agent representing or stating, as applicable, the number of New Bidder Shares so provided to the Sale Agent; and
  - (iii) the Sale Agent, as nominee in trust for the Ineligible Foreign Optionholders, sells those New Bidder Shares, and pays or procures the payment of the proceeds in accordance with clause 5.5; and
- (c) in the case of joint holders of Scheme Options:
- (i) New Bidder Shares to be provided under this scheme will be provided to and registered in the names of the joint holders (or the Sale Agent, as applicable);
  - (ii) any cheque required to be sent under clause 5.5 will be made payable to the joint holders and sent to the holder whose name appears first in the Target Option Register on the Record Date; and
  - (iii) any other document required to be sent under this clause 5 must be forwarded to the holder whose name appears first in the Target Option Register on the Record Date

#### **5.4 Ineligible Foreign Optionholders**

The Bidder has no obligation to provide, and will not provide, any New Bidder Shares to any Ineligible Foreign Optionholders under this scheme and, instead, must procure that those New Bidder Shares which, but for this clause 5.4, would be required to be provided to Ineligible Foreign Optionholders are dealt with on behalf of the Ineligible Foreign Optionholders in accordance with clause 5.5.

#### **5.5 Sale Agent**

- (a) New Bidder Shares that are required to be dealt with under this clause by virtue of clause 5.4 must be provided by the Bidder to the Sale Agent, as nominee in trust for the Ineligible Foreign Optionholders, on the Implementation Date and subsequently sold in accordance with the remaining provisions of this clause 5.5.
- (b) The Bidder must procure that the Sale Agent:
  - (i) as soon as practicable after the Implementation Date, sells the New Bidder Shares provided to it pursuant to clause 5.5(a), in the ordinary course of trading on ASX; and
  - (ii) remits to the Bidder the proceeds of sale (**Option Proceeds**).
- (c) Promptly after receiving the entire Option Proceeds in accordance with clause 5.5(b)(b)(ii), the Bidder must pay, or procure the payment, to each Ineligible

Foreign Optionholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = (B \div C) \times D$$

where:

B = the number of New Bidder Shares that would have been provided to that Ineligible Foreign Optionholder had it not been an Ineligible Foreign Optionholder;

C = the total number of New Bidder Shares which would otherwise have been provided to all Ineligible Foreign Optionholders collectively and which were instead provided to the Sale Agent; and

D = the Option Proceeds.

- (d) The Bidder must make payments, or must procure that payments are made, to Ineligible Foreign Optionholders under clause 5.5(c) by:
- (i) sending (or procuring the Bidder Share Registry to send) it to the Ineligible Foreign Optionholder's Registered Address by cheque in Australian currency; or
  - (ii) if the Ineligible Foreign Optionholder has a payment direction (that is currently used for the payment of dividends) for a bank account with any Australian ADI (as defined in the Corporations Act) recorded in the Target Option Register as at the Record Date, depositing (or procuring the Bidder Option Registry to deposit) it into that account.
- (e) Payment of an amount to an Ineligible Foreign Optionholder under this clause 5.5 will be in full satisfaction of the obligations of the Bidder to the Ineligible Foreign Optionholder under this scheme in respect of that Ineligible Foreign Optionholder's Option Scheme Consideration.
- (f) If the Bidder receives professional advice that any Tax is required by law to be withheld from any such payment, the Bidder must ensure, or must procure, that the relevant amount is withheld before making the payment to the Ineligible Foreign Optionholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this scheme). The Bidder must ensure, or must procure, that any amount so withheld is paid to the relevant taxation authorities within the time permitted by law, and that a receipt or other appropriate evidence of such payment is promptly provided to the relevant Ineligible Foreign Optionholder.
- (g) None of the Target, the Bidder or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares by the Sale Agent. The sale of New Bidder Shares under this clause 5.5 will be at the risk of the Ineligible Foreign Optionholder.
- (h) Each Ineligible Foreign Optionholder appoints the Target as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Optionholder under the Corporations Act.

## 5.6 Status of New Bidder Shares

Subject to this scheme becoming Effective, the Bidder must:

- (a) provide the New Bidder Shares required to be provided by it under this scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share; and
- (b) ensure that each such New Bidder Share is duly issued, fully paid and free from any Encumbrance.

## 5.7 Unclaimed monies

- (a) The Bidder may cancel or procure cancellation of a cheque issued under clause 5.5(d)(i) if the cheque:
  - (i) is returned to the Bidder or the Sale Agent; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request from a Scheme Optionholder, the Bidder must reissue, or procure the reissue of, a cheque that was previously cancelled under this clause.

---

## 6. Dealings in Target Options

### 6.1 Dealings in Target Options by Scheme Optionholders

To establish the identity of the Scheme Optionholders dealings in Target Options will only be recognised if registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Target Option Register is kept; and the Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Optionholders, any transfer or transmission application in respect of the Target Options received after such times or received prior to such times but not in registrable form.

### 6.2 Target Option Register

- (a) The Target must maintain the Target Option Register in accordance with the provisions of this clause 6 until the Option Scheme Consideration has been provided to the Scheme Optionholders and the Target Option Register in this form will solely determine entitlements to the Option Scheme Consideration.
- (b) The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.1 on the Record Date.
- (c) The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Options received after the Record Date.
- (d) From the Record Date until cancellation of the Scheme Options under clause 4.3 or the End Date, no Target Optionholder may deal with Target Options in any way except as set out in this scheme and any attempt to do so will have no effect.

### **6.3 Information to be made available to the Bidder**

As soon as practicable after the Record Date and in any event at least 2 Business Days before the Implementation Date, the Target will ensure that details of the names, Registered Addresses and holdings of Target Options for each Scheme Optionholder are available to the Bidder in the form the Bidder reasonably requires.

### **6.4 Effect of certificates and holding statements**

- (a) All certificates or statements of holding for Target Options will cease to have effect from the Record Date as documents of title in respect of those options.
- (b) As from the Record Date, each entry current at that date on the Target Option Register will cease to have effect except as evidence of entitlement to the Option Scheme Consideration in respect of the Target Options relating to that entry.

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## **7. General scheme provisions**

### **7.1 Consent**

If the Court proposes to approve this scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing.

### **7.2 Agreement of Scheme Optionholders**

Each Scheme Optionholder:

- (a) agrees to the cancellation of their Target Options in accordance with terms of this scheme and agrees to the variation, cancellation or modification of the rights attached to their Target Options constituted by or resulting from this scheme; and
- (b) acknowledges that this scheme binds the Target and all Scheme Optionholders (including those who do not attend the Option Scheme Meeting or do not vote at that meeting or vote against this scheme at that Option Scheme Meeting);
- (c) who is issued New Bidder Shares under this scheme agrees to become a shareholder of the Bidder in respect of those New Bidder Shares and to be bound by the constitution of the Bidder; and
- (d) who is an Ineligible Foreign Optionholder agrees and acknowledges that the payment to it of an amount in accordance with clause 5.5 constitutes the satisfaction in full of its entitlement to the Share Scheme Consideration.

### **7.3 Warranties by Scheme Optionholders**

Each Scheme Optionholder is deemed to have warranted to the Target in its own right and for the benefit of the Bidder that:

- (a) all their Scheme Options (including any rights and entitlements attaching to those Scheme Options) which are cancelled under this scheme will, on the date they are cancelled, be free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise and restrictions on transfer of any kind; and

- (b) subject only to the relevant option terms, they have full power and capacity to deal with their Scheme Options (including any rights and entitlements attaching to those Scheme Options).

#### **7.4 Authority given to the Target**

Upon this scheme becoming Effective, each Scheme Optionholder without the need for any further act:

- (a) irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
- (i) enforcing the Option Deed Poll against the Bidder or the Bidder (as applicable); and
  - (ii) executing any document necessary to give effect to this scheme,
- and the Target accepts such appointment; and
- (b) will be deemed to have authorised the Target to do and execute all acts, matters, things and documents on the part of each Scheme Optionholder necessary to implement this scheme.

#### **7.5 Definition of "sending"**

For the purposes of clause 5.5(d)(i), the expression "sending" means, in relation to each Scheme Optionholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Optionholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Optionholder as at the Record Date by any other means at no cost to the recipient.

---

### **8. General**

#### **8.1 Stamp duties**

The Bidder must pursuant to their obligations under the Option Deed Poll:

- (a) pay all stamp duties and any related fines and penalties in respect of the cancellation of the Scheme Options and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Optionholder against any liability from a failure to comply with clause 8.1(a).

#### **8.2 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this scheme is sent by post to the Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the place where the Target's Option Registry is kept.
- (b) The accidental omission to give notice of the Option Scheme Meeting or the non-receipt of such a notice by any Target Optionholder may not, unless so ordered by

the Court, invalidate the Option Scheme Meeting or the proceedings of the Option Scheme Meeting.

### **8.3 Further acts and documents**

The Target must do all further acts and execute and deliver all further documents required by law or necessary to give effect to this scheme and the transactions contemplated by it.

---

## **9. Governing law and jurisdiction**

### **9.1 Governing law**

This scheme is governed by the law applying in Western Australia.

### **9.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this scheme; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.2(a).

## Schedule 1 Option Scheme Consideration

The Option Scheme Consideration will be calculated as follows:

1. Option Scheme Consideration will be in the form of New Bidder Shares with the number offered set by reference to the Share Scheme Consideration of 0.31 New Bidder Shares per Target Share.
2. The number of New Bidder Shares to be provided for each Scheme Option will be calculated according to the following formula (regardless of whether the Scheme Option has a strike price above, below or equal to the Share Scheme Consideration):

$$N = A \div B$$

where:

N = New Bidder Shares per Scheme Option;

A = the Australian dollar value of the Scheme Option according to the Black Scholes option pricing formula. For the Black Scholes formula:

- (i) the valuation date must be the date of this agreement;
- (ii) the annualised volatility assumption will be set at 50%; and
- (iii) the spot price of Target Shares will be the implied Australian dollar value of the Share Scheme Consideration on the date of this agreement, where the value of Bidder Shares used to determine the implied value of the Share Scheme Consideration is to be the volume weighted average price of Bidder Shares on ASX for the 5 full trading days preceding the date of this agreement; and

B = the volume weighted average price of Bidder Shares on ASX for the 5 full trading days preceding the date of this agreement.



**Annexure C Share Deed Poll**

For personal use only

## Deed poll dated

**By** Kingsgate Consolidated Limited ABN 42 000 837 472 of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia (**Bidder**)

**In favour of** Each person registered as a holder of fully paid ordinary shares in the capital of Dominion Mining Ltd ABN 37 000 660 864 of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**) on issue as at the Record Date (**Scheme Shareholders**)

## Background

- A. On 20 October 2010, the Target and the Bidder entered into a scheme implementation agreement (**Implementation Agreement**) to provide for the implementation of the Share Scheme and the Option Scheme.
- B. The effect of the Share Scheme will be to transfer all Scheme Shares to the Bidder in exchange for the Share Scheme Consideration.
- C. The Bidder enters into this deed poll to covenant in favour of the Scheme Shareholders to provide or procure the provision of the Share Scheme Consideration in accordance with the Share Scheme.

## It is declared as follows

---

### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed poll:

**Share Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and its shareholders, as contemplated by the Implementation Agreement.

#### 1.2 Terms defined in the Implementation Agreement

Capitalised words and phrases defined in the Implementation Agreement and not in this deed poll have the same meaning in this deed poll as in the Implementation Agreement unless the context requires otherwise.

#### 1.3 Interpretation

The provisions of clauses 1.4, 1.5 and 1.6 of the Implementation Agreement form part of this deed poll as if set out in full in this deed poll, except that references to "agreement" in those clauses will be taken to be references to "deed poll".

#### 1.4 Nature of this deed poll

The Bidder acknowledges that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it.

---

## **2. Condition precedent**

### **2.1 Condition**

The obligations of the Bidder under clause 3 are subject to the Share Scheme becoming Effective.

### **2.2 Termination**

The obligations of the Bidder under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or
- (b) the Share Scheme is not Effective by the End Date,

unless the Bidder and the Target otherwise agree.

### **2.3 Consequences of termination**

If this deed poll terminates under clause 2.2, in addition to and without prejudice to any other rights, powers or remedies available to it:

- (a) the Bidder is released from its obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against the Bidder in respect of any breach of this deed poll which occurs before it was terminated.

---

## **3. Provision of the Share Scheme Consideration**

### **3.1 Undertaking**

Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder to provide or procure the provision of the Share Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Share Scheme.

### **3.2 Status of New Bidder Shares**

The Bidder undertakes in favour of each Scheme Shareholder that the New Bidder Shares which are provided to Scheme Shareholders and the Sale Agent in accordance with the Share Scheme will:

- (a) rank equally in all respects with existing Bidder Shares; and
- (b) be duly issued, fully paid and free from any Encumbrance.

---

## **4. Warranties**

The Bidder warrants to each Scheme Shareholder that:

- (a) it is a company properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation;
- (b) it has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;

- For personal use only
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
  - (d) this deed poll constitutes (or will when executed constitute) valid legal and binding obligations of it and is enforceable against it in accordance with its terms;
  - (e) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
  - (f) the execution, delivery and performance of this deed poll by it does not and will not result in a breach of or constitute a default under:
    - (i) any agreement to which it is party;
    - (ii) any provision of the constitution or articles of association (as applicable); or
    - (iii) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which it is bound.

---

## **5. Continuing obligations**

This deed poll is irrevocable and remains in full force and effect until the Bidder has fully performed its obligations under it or the earlier termination of this deed poll under clause 2.

---

## **6. General**

### **6.1 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed poll:

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

if to the Bidder:

Address: Suite 801, Level 8  
14 Martin Place  
Sydney NSW 2000  
Australia

Fax number: +61 2 8256 4810

For the attention of: Company Secretary

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 6.1(b); and
- (e) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

## **6.2 Governing law**

This deed poll is governed by and must be construed according to the law applying in Western Australia.

## **6.3 Jurisdiction**

The Bidder irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.3(a).

## **6.4 Amendments**

This deed poll may be amended only by another deed poll entered into by the Bidder, and then only if the amendment is agreed to by the Target in writing and the Court indicates that the amendment would not preclude approval of the Share Scheme.

## **6.5 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed poll by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (b) A waiver or consent given by a party under this deed poll is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of this deed poll operates as a waiver of another breach of that term or of a breach of any other term of this deed poll.

## **6.6 Further acts and documents**

The Bidder must do all further acts and execute and deliver all further documents required by law or necessary to give effect to this deed poll and the transactions contemplated by it.

## **6.7 Assignment**

The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, novated or otherwise transferred without the prior written consent of the Bidder.

## **6.8 Stamp duties**

The Bidder must:

- (a) pay all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Shareholder against any liability arising from a failure to comply with clause 6.8(a).

## **6.9 Cumulative rights**

The rights, powers and remedies of the Bidder and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

**Executed and delivered** as a deed poll.

**Executed by Kingsgate Consolidated Limited ABN 42 000 837 472** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

For personal use only

**Annexure D Option Deed Poll**

For personal use only



## Deed poll dated

**By** Kingsgate Consolidated Limited ABN 42 000 837 472 of Suite 801, Level 8, 14 Martin Place, Sydney, New South Wales 2000, Australia (**Bidder**)

**In favour of** Each person registered as a holder of options to acquire unissued fully paid ordinary shares in the capital of Dominion Mining Ltd ABN 37 000 660 864 of 15 Outram Street, West Perth, Western Australia 6005, Australia (**Target**) on issue as at the Record Date (**Scheme Optionholders**)

## Background

- A. On 20 October 2010, the Target and the Bidder entered into a scheme implementation agreement (Implementation Agreement) to provide for the implementation of the Share Scheme and the Option Scheme.
- B. The effect of the Option Scheme will be to cancel all Scheme Options in exchange for the Option Scheme Consideration.
- C. The Bidder enters into this deed poll to covenant in favour of the Scheme Optionholders to provide or procure the provision the Option Scheme Consideration in accordance with the Option Scheme.

## It is declared as follows

---

### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed poll:

**Option Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and holders of options to acquire unissued fully paid ordinary shares in the capital of the Target, as contemplated by the Implementation Agreement.

#### 1.2 Terms defined in the Implementation Agreement

Capitalised words and phrases defined in the Implementation Agreement and not in this deed poll have the same meaning in this deed poll as in the Implementation Agreement unless the context requires otherwise.

#### 1.3 Interpretation

The provisions of clauses 1.4, 1.5 and 1.6 of the Implementation Agreement form part of this deed poll as if set out in full in this deed poll, except that references to "agreement" in those clauses will be taken to be references to "deed poll".

#### 1.4 Nature of this deed poll

The Bidder acknowledges that this deed poll may be relied on and enforced by any Scheme Optionholder in accordance with its terms even though the Scheme Optionholder are not a party to it.

---

## **2. Condition precedent**

### **2.1 Condition**

The obligations of the Bidder under clause 3 are subject to the Option Scheme becoming Effective.

### **2.2 Termination**

The obligations of the Bidder under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or
- (b) the Option Scheme is not Effective by the End Date,

unless the Bidder and the Target otherwise agree.

### **2.3 Consequences of termination**

If this deed poll terminates under clause 2.2, in addition to and without prejudice to any other rights, powers or remedies available to it:

- (a) the Bidder is released from its obligations to further perform this deed poll; and
- (b) each Scheme Optionholder retains the rights they have against the Bidder in respect of any breach of this deed poll which occurs before it was terminated.

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## **3. Provision of the Option Scheme Consideration**

### **3.1 Undertaking**

Subject to clause 2, the Bidder undertakes in favour of each Scheme Optionholder to provide or procure the provision of the Option Scheme Consideration to each Scheme Optionholder in accordance with the terms of the Option Scheme.

### **3.2 Status of New Bidder Shares**

The Bidder undertakes in favour of each Scheme Optionholder that the New Bidder Shares which are provided to Scheme Optionholder and the Sale Agent in accordance with the Option Scheme will:

- (a) rank equally in all respects with existing Bidder Shares; and
- (b) be duly issued, fully paid and free from any Encumbrance.

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## **4. Warranties**

The Bidder warrants to each Scheme Optionholder that:

- (a) it is a company properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation;
- (b) it has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;

- For personal use only
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
  - (d) this deed poll constitutes (or will when executed constitute) valid legal and binding obligations of it and is enforceable against it in accordance with its terms;
  - (e) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
  - (f) the execution, delivery and performance of this deed poll by it does not and will not result in a breach of or constitute a default under:
    - (i) any agreement to which it is party;
    - (ii) any provision of the constitution or articles of association (as applicable); or
    - (iii) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which it is bound.

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## **5. Continuing obligations**

This deed poll is irrevocable and remains in full force and effect until the Bidder has fully performed its obligations under it or the earlier termination of this deed poll under clause 2.

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## **6. General**

### **6.1 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed poll:

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

if to the Bidder:

Address: Suite 801, Level 8  
14 Martin Place  
Sydney NSW 2000  
Australia

Fax number: +61 2 8256 4810

For the attention of: Company Secretary

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 6.1(b); and
- (e) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

## **6.2 Governing law**

This deed poll is governed by and must be construed according to the law applying in Western Australia.

## **6.3 Jurisdiction**

The Bidder irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and
- (b) waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.3(a).

## **6.4 Amendments**

This deed poll may be amended only by another deed poll entered into by the Bidder, and then only if the amendment is agreed to by the Target in writing and the Court indicates that the amendment would not preclude approval of the Option Scheme.

## **6.5 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed poll by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (b) A waiver or consent given by a party under this deed poll is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of this deed poll operates as a waiver of another breach of that term or of a breach of any other term of this deed poll.

## **6.6 Further acts and documents**

The Bidder must do all further acts and execute and deliver all further documents required by law or necessary to give effect to this deed poll and the transactions contemplated by it.

## **6.7 Assignment**

The rights of each Scheme Optionholder under this deed poll are personal and cannot be assigned, novated or otherwise transferred without the prior written consent of the Bidder.

## **6.8 Stamp duties**

The Bidder must:

- (a) pay all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Optionholder against any liability arising from a failure to comply with clause 6.8(a).

## **6.9 Cumulative rights**

The rights, powers and remedies of the Bidder and each Scheme Optionholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

**Executed and delivered** as a deed poll.

**Executed by Kingsgate Consolidated Limited ABN 42 000 837 472** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of company secretary/director

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**Annexure E Target Announcement**

For personal use only



# Kingsgate

Consolidated Limited

ABN 42 000 837 472



# Dominion Mining Limited

ABN 37 000 660 864

20 October 2010

**Via ASX online  
(6 pages)**

The Manager  
Company Announcement Office  
Australian Securities Exchange

Dear Sir/Madam,

## **KINGSGATE AND DOMINION ANNOUNCE AGREED TRANSACTION**

Kingsgate Consolidated Limited (ASX:KCN) ("Kingsgate") and Dominion Mining Limited (ASX:DOM) ("Dominion") are pleased to announce that they have signed a Scheme Implementation Agreement ("SIA") under which it is proposed Kingsgate will acquire all of the issued and outstanding shares in Dominion under a Scheme of Arrangement ("Scheme"). The transaction has been unanimously recommended by Dominion's Board of Directors who will vote the shares they control in favour of the transaction.<sup>1</sup>

Consideration for the transaction will be Kingsgate shares, with Dominion shareholders offered 0.31 Kingsgate shares for each Dominion share ("Offer") they own. The transaction values Dominion at \$3.63 per share, or approximately A\$376 million<sup>2</sup>.

### **Transaction Highlights:**

- **Consolidates Kingsgate's position as a preferred exposure amongst mid-tier ASX gold producers, with an implied market capitalisation post-transaction of approximately A\$1.6 billion<sup>3</sup>**
- **Provides a strong operational and financial platform for Kingsgate to continue to deliver a superior growth profile for shareholders**
- **Combined operations with the potential to produce up to 300,000 ounces p.a. of gold following commissioning of the Chatree plant expansion from a reserve / resource base of 2.4 million ounces and 5.3 million ounces respectively<sup>4</sup>**

<sup>1</sup> In the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders

<sup>2</sup> Based on the closing price of Kingsgate shares on 19 October 2010 of \$11.71

<sup>3</sup> Based on the closing price of Kingsgate shares on 19 October 2010 of \$11.71 and Kingsgate's offer of 0.31 Kingsgate shares for each Dominion share

<sup>4</sup> Refer Appendix



- **Combines complementary technical capabilities to create a strong operational team capable of maximising value from the respective companies' operating and exploration assets**
- **Provides Dominion shareholders with operational and growth diversification through exposure to Kingsgate's prospective Chatree operations and broader exploration projects in Thailand and offers enhanced access to capital to develop Dominion's exploration portfolio**
- **Provides Kingsgate shareholders with geopolitical and operational diversification through exposure to Dominion's Challenger project and exploration assets in Australia**

The exchange ratio of 0.31 Kingsgate shares for each Dominion share represents an attractive premium for Dominion shareholders. The implied offer price of \$3.63 per share represents:

- a 33.0% premium to the closing price of \$2.73 per Dominion Share on ASX on the last trading day before the Announcement Date;
- a 27.9% premium to the five day volume weighted average price of \$2.84 per Dominion Share on ASX on the last trading day before the Announcement Date; and
- a 34.7% premium to the 30 day volume weighted average price of \$2.69 per Dominion Share on ASX on the last trading day before the Announcement Date.

Dominion's Board of directors unanimously recommends that Dominion shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders. Each Dominion director intends to vote all of the Dominion shares in which they have a relevant interest and in respect of which they have the power to vote in favour of the Scheme (in the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders).

After completion of the transaction, current Kingsgate shareholders will own approximately 76% of Kingsgate following implementation of the Scheme and current Dominion shareholders will own approximately 24%. It is proposed that Peter Alexander, a current Dominion non-executive director, will join the Board of Kingsgate, while Peter Joseph, Dominion's Chairman will be retained as an Adviser to the Kingsgate Board.

Commenting on the transaction, Kingsgate Chairman, Ross Smyth-Kirk, said "This is an important step in Kingsgate's strategy to consolidate its position as the ASX's premier mid-tier gold producer. Dominion will provide Kingsgate with immediate access to additional production and cashflow and also provide geographic and operational diversification. From this enlarged operational and financial platform, Kingsgate will continue to seek out growth opportunities from which to further create value for its shareholders."

Dominion Chairman, Peter Joseph, said "The Dominion Board recognises the strong strategic logic in a combination of the two organisations which will provide enhanced growth opportunities for all shareholders. Dominion shareholders will receive an attractive premium and, by receiving Kingsgate shares, will be able to participate in the benefits created by the combination of the two companies. We are pleased to recommend this transaction to our shareholders for their consideration".

## **Implementation**

Kingsgate has entered into a Scheme Implementation Agreement with Dominion under which Dominion has agreed to a proposed Scheme between Dominion and its shareholders for the acquisition of its shares by Kingsgate. A copy of the SIA is attached to this announcement.

The transaction is subject to a number of conditions, including receipt of required regulatory and court approvals, along with the approval of Dominion shareholders. Regulatory approvals include approval from the Australian Foreign Investment Review Board ("FIRB").

The SIA also contains customary deal protection mechanisms, including no shop and no talk provisions, a matching right for Kingsgate in the event of a competing proposal and a mutual break fee of A\$3.75 million payable in certain circumstances.

Kingsgate also proposes to acquire all outstanding Dominion employee options via an options Scheme of Arrangement.

### **Next Steps**

In due course, Dominion shareholders will receive a Scheme Booklet that will contain full details of the proposed Scheme, including the basis for the Dominion Board's recommendation that shareholders approve the proposed Scheme.<sup>5</sup> Dominion will shortly appoint an independent expert to deliver a report on whether the proposed Scheme is in the best interests of Dominion's shareholders. The independent expert's report will be included in the Scheme Booklet.

It is anticipated that Dominion will send the Scheme Booklet to shareholders in December. A meeting of Dominion's shareholders to approve the Scheme is expected to be held in late January 2011, with the Scheme expected to be implemented by early February.

### **Advisers for the Transaction**

Kingsgate's financial adviser is Macquarie Capital Advisers and its legal adviser is Clayton Utz.

Dominion's financial adviser is Goldman Sachs and its legal adviser is Johnson Winter & Slattery.

### **Conference Call**

Kingsgate and Dominion will hold a conference call Wednesday, 20 October 2010 to discuss the transaction at 4:00 p.m. AEST. Participants may dial in to the call on +61 2 8113 1400 or 1800 554 798 toll free in Australia and entering the Participant Pin Code 6905183#.

The transaction presentation is available on both companies' websites. A copy is also available on the ASX website. The webcasts will be available for replay in due course. For further information on Kingsgate, please visit [www.kingsgate.com.au](http://www.kingsgate.com.au). For further information on Dominion, please visit [www.dml.com.au](http://www.dml.com.au).

### **About Kingsgate**

Kingsgate Consolidated Limited (Kingsgate) is a low cost gold producer and a highly successful gold mining and exploration company, traded on the Australian Stock Exchange (KCN: ASX). The company owns and operates the Chatree gold mine in central Thailand through its Thai subsidiary, Akara Mining Limited, using world's best practice for safe, environmental and socially responsible operations.

A growing reserve/resource position within granted mining leases lies in a gold province which exhibits world class potential, with recent near mine gold discoveries.

### **About Dominion**

Dominion Mining Limited is an Australian gold producer and explorer whose principal asset is the Challenger Gold Project in South Australia which has been in production since 2002 initially as an open cut mine and in the past five years as an underground operation. Dominion has recently completed an expansion at the Challenger mine which is forecast to produce in excess of 100,000

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<sup>5</sup> In the absence of a superior proposal and subject to an independent expert opining that the Scheme is in the best interests of shareholders

ounces in the current financial year. Dominion also has an extensive exploration portfolio in Western Australia and South Australia and has recently applied for exploration licences in the Peoples Democratic Republic of Laos.

**For further information please contact:**

**Gavin Thomas**  
**Managing Director & CEO**  
**Kingsgate Consolidated Limited**  
**Tel: +61 2 8256 4800**

**Jonathan Shellabear**  
**Managing Director & CEO**  
**Dominion Mining Limited**  
**Tel: +61 8 9426 6400**

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## Appendix

### Chatree Reserves and Resources

Chatree Ore Reserves as at 30 June 2010 (>0.4g/t gold cut-off grade)						
Source	Category	Tonnes	Gold Grade	Silver Grade	Gold Contained	Silver Contained
		(millions)	(g/t)	(g/t)	(million ounces)	(million ounces)
From Pits	Proved	37.4	1.00	9.5	1.20	11.42
	Probable	18.7	0.98	8.4	0.59	5.02
Stockpiles		5.6	0.79	12.1	0.14	2.19
Chatree Total	Total	61.7	0.97	9.4	1.93	18.63

Chatree Mineral Resources Inclusive of Ore Reserves as at 30 June 2010 (>0.3g/t gold cut-off grade)						
Source	Category	Tonnes	Gold Grade	Silver Grade	Gold Contained	Silver Contained
		(millions)	(g/t)	(g/t)	(million ounces)	(million ounces)
From Pits	Measured	79.8	0.81	7.4	2.07	18.85
	Indicated	56.7	0.76	6.1	1.39	11.07
	Inferred	31.4	0.71	4.8	0.72	4.86
Stockpiles		5.6	0.79	12.1	0.14	2.19
Chatree Total	Total	173.5	0.77	6.6	4.32	36.97

#### Competent Person Statement:

Information in this document relates to Exploration Results, Mineral Resource and Ore Reserve estimates based on information compiled by the following Competent Persons: Ron James, Fiona Davidson, Guy Davies and Suphanit Suphananthi who are employees of the Kingsgate Group and members of The Australasian Institute of Mining and Metallurgy and Rob Spiers who is an employee of Hellman & Schofield Pty Ltd and member of The Australian Institute of Geoscientists. These people qualify as Competent Persons as defined in the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the JORC Code, 2004 edition) and possess relevant experience in relation to the mineralisation being reported herein as Exploration Results, Mineral Resources and Ore Reserves. Each Competent Person has consented to the Public Reporting of these statements and the inclusion of the material in the form and context in which it appears.

## Challenger Reserves and Resources

Challenger Ore Reserves as at 30 June 2010				
Source	Category	Tonnes	Gold Grade	Gold Contained
		(thousands)	(g/t)	(thousand ounces)
From Mine	Proved	318	5.8	59
	Probable	1,834	6.0	352
Stockpiles		157	2.1	9
Challenger Total	Total	2,310	5.7	420

Challenger Mineral Resources as at 30 June 2010				
Source	Category	Tonnes	Gold Grade	Gold Contained
		(thousands)	(g/t)	(thousand ounces)
From Mine	Measured	310	6.3	63
	Indicated	2,232	6.4	460
	Inferred	1,672	7.8	418
Stockpiles		157	1.8	8
Challenger Total	Total	4,371	6.8	950

### **Competent Person Statement:**

The information in this document that relates to Exploration Results, Mineral Resources or Ore Reserves is based on information compiled by Peter Bamford, Tony Poustie and Paul Androvic who are full-time employees of the Company, members of the Australasian Institute of Mining and Metallurgy. Peter Bamford, Tony Poustie and Paul Androvic have sufficient experience, which is relevant to the style of mineralisation and type of deposit under consideration and to the activity, which they are undertaking to qualify as Competent Persons as defined in the 2004 Edition of the 'Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves'. Peter Bamford, Tony Poustie and Paul Androvic, consent to the inclusion in the report of the matters based on their information in the form and context in which it appears.