

ASX Release Date: 28 October 2020

Xplore Enters into a Scheme Implementation Agreement with HUB24 at A\$0.20 per Share

Acquisition Highlights

- Xplore and HUB24 have entered into a binding Scheme Implementation Agreement (SIA) under which it is proposed that HUB24 will acquire Xplore by way of scheme of arrangement.
- The transaction will be affected by a scheme of arrangement between Xplore and its shareholders, and a separate concurrent scheme of arrangement between Xplore and its optionholders (together, the Schemes).
- Xplore shareholders to receive total value of \$0.20 per share comprising 50% cash and 50% HUB24 shares, but with flexibility to elect to receive all cash or all shares (subject to scale back if cap limits are exceeded). The transaction values 100% of Xplore equity at \$60 million.
- Significant takeover premium of 203% to the last closing price of Xplore shares prior to the date of this announcement.
- Inclusion of HUB24 shares in the consideration mix allows Xplore shareholders to retain exposure to the high growth, independent investment platform sector.
- Xplore option holders will receive cash for each option held calculated in accordance with an agreed option valuation methodology.
- The Board of Xplore unanimously recommends that Xplore shareholders and optionholders vote in favour of the Schemes, in the absence of a superior proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of Xplore shareholders and Xplore optionholders.
- Each of the Xplore Directors intends to vote any Xplore shares or Xplore options in which he or she has a relevant interest in favour of the Schemes in absence of a superior proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of Xplore shareholders and Xplore optionholders.
- The Schemes are subject to certain conditions which must be satisfied before the Schemes can be implemented. Xplore shareholders and Xplore optionholders do not need to take any action at this time.

28 October 2020: Xplore Wealth Ltd (ASX:XPL) (**Xplore**) announces that it has entered into a binding Scheme Implementation Agreement with HUB24 Limited (ASX:HUB) (**HUB24**) under which it is proposed that HUB24 will acquire 100% of the shares in Xplore by way of scheme of arrangement between Xplore and its shareholders (**Share Scheme**), and 100% of the options in Xplore will be cancelled by way of scheme of arrangement between Xplore and its optionholders (**Option Scheme**).

Overview of the Schemes

Under the terms of the Share Scheme, Xplore shareholders will receive total value of \$0.20 per Xplore share, valuing 100% of the share capital at \$60 million. Xplore shareholders will have the flexibility to elect to receive the Scheme consideration (**Scheme Consideration**) in one of the below alternatives (subject to cap limitations):

- \$0.20 cash per Xplore share (**Cash Consideration**);
- 0.00927 HUB24 shares for each Xplore share (**Scrip Consideration**)¹; or
- the default consideration of 50% Cash Consideration and 50% Scrip Consideration (**Mixed Consideration**).

The Share Scheme Consideration has a mix and match facility to allow flexibility and is subject to a minimum cash consideration of \$30 million and a maximum cash consideration payable by HUB24 of \$36 million (**Maximum Cash Consideration**) and maximum HUB24 scrip consideration of \$30 million resulting in approximately 1.38m HUB24 shares being issued (**Maximum Scrip Consideration**).

If Xplore shareholders elect to receive aggregate cash consideration that exceeds the Maximum Cash Consideration, then each Xplore shareholder who elects to receive cash will have their cash consideration scaled back. Conversely, if the elected aggregate scrip consideration exceeds the Maximum Scrip Consideration, then each Xplore shareholder who elects to receive scrip will have their scrip consideration scaled back.

Under the Option Scheme, Xplore optionholders will receive cash for each option held calculated in accordance with an agreed option valuation methodology which takes account of factors such as the option exercise price, the current level and volatility of the underlying share price and the time to maturity of the option as well as the Offer price of \$0.20 per share.

The Share Scheme is not dependent on the Option Scheme proceeding. However, the Option Scheme will only proceed if the Share Scheme proceeds.

Implied Value of the Offer

The proposed Share Scheme consideration equates to a total value of \$0.20 per Xplore share under each alternative, based on a HUB24 share price of \$21.58, being the 10-day VWAP to 23 October 2020. A value of \$0.20 per Xplore share represents a takeover premium of:

- 203.0% to Xplore's trading price of 6.60 cents on Tuesday 27 October 2020, being the last trading day prior to the date of this announcement;
- 198.7% to Xplore's 10-day VWAP of 6.70 cents;
- 199.8% to Xplore's 30-day VWAP of 6.67 cents; and

The implied value of the scrip element of HUB24's Offer and premium will shift with movements in HUB24's share price up until completion of the Schemes.

¹ Calculated based on an HUB24 share price of \$21.58 being the 10-day VWAP to 23 October 2020

For Xplore shareholders that receive HUB24 shares, including as a result of scale-back or by default for 50% of their Xplore shareholding if they do not make an election, HUB24's share price may rise or fall before the Scheme implementation date expected to be in March 2021. Conversely, shareholders that receive HUB24 shares will retain an exposure to the investment platform sector and could benefit from future growth and consolidation in that market, any synergies that HUB24 can realise from the Xplore transaction, and any future improvement in the HUB24 share price.

Xplore Board Recommendation

Each Director of the Board of Xplore considers the Share Scheme and Option Scheme to be in the best interest of Xplore shareholders and optionholders respectively and recommends that Xplore shareholders and optionholders vote in favour of the Schemes, in each case in the absence of a superior proposal and subject to the Independent Expert concluding that the Share Scheme is in the best interests of Xplore shareholders and the Option Scheme is in the best interest of Xplore optionholders.

Subject to those same qualifications, each Xplore Director intends to vote, or procure the voting of, any Xplore shares and Xplore options in which he or she has a Relevant Interest² in favour of the Share Scheme and Option Scheme respectively.

In agreeing to recommend the Share Scheme, the Xplore Directors have considered:

1. the attractive takeover premium being offered to Xplore shareholders relative to current Xplore share trading levels;
2. the current wave of industry consolidation occurring in the independent platform market and significant changes in the wealth management industry; and
3. the outlook, risks and opportunities available for Xplore as a standalone entity and the outlook, risks and opportunities available to Xplore shareholders as part of HUB24.

Xplore Chairman, Alex Hutchison said: *"The offer from HUB24 is highly compelling for Xplore shareholders. The Australian investment platform market is undergoing significant consolidation driven by rapid change in the advice and wealth management sectors. Contributing factors include the benefits and economies of scale, heightened regulation and a sharp focus on the best interest of consumers served by advisers with best-of-breed administration tools and technology.*

Clients are also benefiting from industry consolidation and the economies of scale. The HUB24 transaction is an opportunity for Xplore shareholders to receive a highly attractive takeover premium and to retain an exposure to the investment platform industry via receiving HUB24 shares.

"For Xplore staff, the HUB24 transaction underlines a critical point: a growing business sees strong value in our highly experienced people. The Xplore business has been built from the ground up on the shoulders of a highly qualified and skilled team. The future opportunity for Xplore people within a larger, well-capitalised business with growth ambitions looks very positive," Mr Hutchison said.

² As defined in the *Corporations Act 2001* (Cth).

“Importantly, for our financial planning customers and partners utilising the Xplore platforms or MDA Service, they will benefit from the continued development of the platform with a commitment to strengthen the customised service and support that is a feature of the Xplore offer to our financial planning clients” Mr Hutchison concluded.

HUB24 Managing Director, Andrew Alcock said: *“As a specialist platform provider with expertise in managed accounts the Xplore platform complements HUB24’s market leading solution and introduces additional capability including non-custody portfolio services, domestic and global bonds and international domiciled managed funds, together with the skills and expertise of the Xplore Wealth team.*

Once these transactions have been completed we look forward to welcoming the Xplore employees to our growing HUB24 team and growing the business as part of HUB24.”

Details of the Scheme Implementation Agreement

The implementation of the Schemes remains subject to certain conditions set out in clauses 3.1 and 3.3 of the SIA, including (among others):

- (in respect of the Share Scheme) approval by Xplore shareholders, ASIC, ASX and the Court, no material adverse change, no prescribed occurrences and no material breach of warranties given by Xplore or HUB24; and
- (in respect of the Option Scheme) approval by Xplore optionholders, ASIC, ASX and the Court, and the Share Scheme becoming effective (this means that the Option Scheme will only proceed if the Share Scheme proceeds. However, the Share Scheme is not dependent on the Option Scheme proceeding),

The Schemes are not subject to due diligence or financing considerations.

Under the SIA, Xplore will be bound by customary exclusivity provisions including “no shop”, “no talk”, “no due diligence”, “notification” and “matching” obligations for the benefit of HUB24. The “no talk” and “no due diligence” obligations are subject to customary fiduciary carve-outs for the benefit of Xplore’s directors. Xplore and HUB24 have also agreed reciprocal break fees of \$600,000 payable in certain circumstances.

A copy of the Scheme Implementation Agreement (with certain redactions) is attached to this announcement.

Subject to ASIC registration and Court approval, the Explanatory Booklet is expected to be dispatched to Xplore shareholders and optionholders in January 2021. The Explanatory Booklet will contain more information regarding the transaction, detailed reasons for the Board’s recommendation, an Independent Expert’s Report and notice of the Share Scheme Meeting and the Option Scheme Meeting, and other customary information.

It is anticipated that Xplore shareholders and Xplore optionholders will meet in February 2021 to vote on the Schemes.

Xplore shareholders and Xplore optionholders do not need to take any action at this time.

An indicative timetable for the shareholders and optionholders is set out below:

Event	Expected Date
First court hearing	18 December 2020
Dispatch of Explanatory Booklets to Xplore shareholders and Xplore optionholders	11 January 2021
Share Scheme meeting	12 February 2021
Option Scheme meeting	12 February 2021
Second court hearing	19 February 2021
Effective date	22 February 2021
Share Scheme and Option Scheme Record date	24 February 2021
Implementation date	3 March 2021

These dates are indicative and subject to change.

Xplore is advised by Shaw and Partners Limited as financial adviser and Hamilton Locke as legal adviser.

This release has been authorised by the Board of Xplore.

Dated: 28 October 2020

For Investors and Shareholders:

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Chairman
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Non-Executive Director
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This release contains forward-looking statements and information that are necessarily subject to risks, uncertainties and assumptions. Many factors could cause actual results, performance or achievements of the Company to be materially different from those expressed or implied in this release including, amongst others, changes in general economic and business conditions, regulatory environment, results of advertising and sales activities, competition, and the availability of resources. Should one or more of these risks or uncertainties materialise, or should underlying assumptions prove incorrect, actual results may vary materially from those described in this release. Except as required by law, the Company assumes no obligation to update or correct the information in this release. To the maximum extent permitted by law, the Company and its subsidiaries and officers do not make any representation or warranty as to the likelihood of fulfilment of any forward-looking statements and disclaim responsibility and liability for any forward-looking statements or other information in this release. This release should be read in conjunction with the Company's other ASX announcements and releases.



Execution version

Scheme Implementation Agreement

—
Xplore Wealth Limited (**Xplore**)
HUB24 Limited (**HUB24**)
—

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MinterEllison

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Scheme Implementation Agreement

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Details

Date 28 October 2020

Parties

Name **Xplore Wealth Limited**
ABN 34 128 316 441
Short form name **Xplore**
Notice details Suite 1, Level 5, 28 Margaret Street, Sydney, NSW 2000
Email: Don.Sharp@xplorewealth.com.au
Attention: Don Sharp

Name **HUB24 Limited**
ABN 67 124 891 685
Short form name **HUB24**
Notice details Level 2, 7 Macquarie Place, Sydney, 2000
Email: wmcintyre@hub24.com.au and phoward@hub24.com.au
Attention: Wendy McIntyre and Paul Howard

Background

- A Xplore and HUB24 have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B Xplore and HUB24 have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement, unless the context otherwise requires, the following words and expressions have meanings as follows:

Acceptable Confidentiality Deed means a confidentiality deed which contains obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of HUB24 under the Confidentiality Deed.

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a);

Adviser means in relation to an entity:

- (a) a financier to the entity in connection with the Proposed Transaction; or
- (b) a financial, corporate, legal, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Proposed Transaction by the entity.

AFSL means an Australian Financial Services Licence.

Announcements means:

- (a) an announcement by Xplore in relation to the Proposed Transaction; and
 - (b) an announcement by HUB24 in relation to the Proposed Transaction,
- in both cases in the form agreed by Xplore and HUB24 (both acting reasonably), prior to signing of this agreement.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this agreement and Xplore was the designated body.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market known as the Australian Securities Exchange operated by it.

Authorised Person means, in respect of a person:

- (a) a director, officer or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

APRA means the Australian Prudential Regulation Authority.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Cash Consideration Share Cap means the greater of:

- (a) zero; and

- (b) the number of Xplore Shares representing 60% of all Xplore Shares on issue as at the Share Scheme Record Date (rounded down to the nearest whole Xplore Share) less the sum of:
- (i) the Ineligible Shares; and
 - (ii) the number of Scheme Shares in respect of which cash is to be paid as Scheme Consideration under paragraph (d)(ii) of the definition of Share Scheme Consideration (after the operation of the scale back adjustment under paragraph (d)(iii) of the definition of Share Scheme Consideration (if applicable)).

Cash Consideration means \$0.20 for each Scheme Share.

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

Competing Proposal means any offer, proposal or expression of interest, transaction or arrangement (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed substantially in accordance with its terms, a person or two or more persons who are Associates would directly or indirectly:

- (a) acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Xplore Shares or of the share capital of any material Xplore Group Member;
- (b) acquire control of Xplore, within the meaning of section 50AA of the Corporations Act;
- (c) acquire, obtain a right to acquire, or otherwise obtain an economic interest in, 20% or more by value of the business or property of Xplore or any member of the Xplore Group (based on the value of the Xplore Group's total consolidated assets as at 30 June 2020);
- (d) acquire or merge with Xplore or amalgamate with, or acquire a significant shareholding or economic interest in Xplore or any member of Xplore Group or 20% or more by value of the total assets or business of any member of Xplore Group; or
- (e) result in Xplore ceasing to be admitted to the official list of ASX or the Shares ceasing to be officially quoted on the market operated by ASX (except in circumstances where such cessation is as a result of the implementation of the Share Scheme); or
- (f) require HUB24 to abandon, or otherwise fail to proceed with, the Proposed Transaction,

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

Conditions means the conditions set out in clauses 3.1 and 3.3 and **Condition** means any one of them.

Confidentiality Deed means the confidentiality deed between Xplore and HUB24 dated 11 September 2020.

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

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Data Room means the Project Asclepius data room hosted by Intralinks.

Delivery Time means in relation to the Second Court Date, 2 hours before the commencement of the hearing or if the commencement of the hearing is adjourned, the commencement of the adjourned hearing, of the Court to approve the Share Scheme in accordance with section 411(4)(b) of the Corporations Act.

Due Diligence Material means the written information disclosed by or on behalf of Xplore and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to HUB24, or any of its Authorised Persons prior

to the date of this agreement in the Data Room, as evidenced by the USB provided by Xplore to HUB24 on execution of this agreement.

Effective means, when used in relation to the Share Scheme or the Option Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Share Scheme or the Option Scheme (as the case may be).

Effective Date means the date on which the Share Scheme or the Option Scheme (as the case may be) becomes Effective.

Election means an election by a Xplore Shareholder, to receive either:

- (i) in relation to 100% of their Scheme Shares, Scheme Consideration in the form of HUB24 Consideration Shares (such Election, **Maximum Scrip Election**); or
- (ii) in relation to 100% of their Scheme Shares, Scheme Consideration in the form of cash (such Election, **Maximum Cash Election**).

Election Date means 5.00pm on the date that is seven clear days before the Proxy Cut-Off Date.

End Date means:

- (a) 30 April 2021; or
- (b) such other date and time agreed in writing between HUB24 and Xplore.

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

- (a) the End Date;
- (b) the Effective Date of the Share Scheme; and
- (c) the date this agreement is terminated in accordance with its terms.

Explanatory Booklet means the explanatory booklet to be prepared by Xplore in respect of the Proposed Transaction in accordance with the terms of this agreement and to be dispatched to Xplore Shareholders.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) borrowing from any bank or other financial institution;
- (b) bill, bond, debenture, note or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;
- (d) guarantee;
- (e) finance or capital lease;
- (f) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;
- (g) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (h) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of the Xplore Group; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

First Court Date means the date the Court first hears the application to order the convening of the Share Scheme Meeting and the Option Scheme Meeting under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Foreign Scheme Shareholder means a Scheme Shareholder whose address as shown in the Xplore Register (as at the Share Scheme Record Date) is located outside of:

- (a) Australia and its external territories;

- (b) New Zealand; and
- (c) any other jurisdictions as may be agreed in writing by Xplore and HUB24,

unless HUB24 determines (in its absolute discretion), that HUB24 is permitted to allot and issue HUB24 Consideration Shares to that Scheme Shareholder by the laws of that place either unconditionally or after compliance with conditions that HUB24 considers are not unduly onerous or impracticable.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

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

HUB24 Break Fee has the meaning given to that term in clause 15(a).

HUB24 Consideration Share means a HUB24 Share to be issued under the terms of the Share Scheme as Share Scheme Consideration.

HUB24 Due Diligence Material means the written information disclosed by or on behalf of HUB24 and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to Xplore, or any of its Authorised Persons prior to the date of this agreement .

HUB24 Group means HUB24 and each of its Subsidiaries (excluding, at any time, Xplore and its Subsidiaries to the extent that Xplore and its Subsidiaries are Subsidiaries of HUB24 at that time). A reference to a member of the **HUB24 Group** or a **HUB24 Group Member** is a reference to HUB24 or any such Subsidiary.

HUB24 Information means such information regarding HUB24 that is provided by or on behalf of HUB24, or any of their Advisers, to Xplore, the Independent Expert or the Investigating Accountant:

- (a) to enable the Explanatory Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with HUB24's obligations under clause 7.2(a).

and, for the avoidance of doubt, does not include the Xplore Information, the Independent Expert's Report or the Investigating Accountant's Report.

HUB24 Nominee has the meaning given to that term in clause 2(c).

HUB24 Parties means the members of the HUB24 Group and their respective Authorised Persons.

HUB24 Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

- (a) HUB24 converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) HUB24 resolves to reduce its share capital in any way;
- (c) HUB24:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) e HUB24 issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option other than:

- (i) under the valid exercise of an option or performance right on issue immediately before the date of this agreement; or
- (ii) an issue or grant of a security (for the avoidance of doubt this includes shares and options) or a performance right under an employment contract or employee incentive scheme in place as at the date of this agreement;
- (e) HUB24 issues, or agrees to issue, convertible notes;
- (f) any member of the HUB24 Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property which represents more than 50% of the EBITDA of the HUB24 Group;
- (g) any member of the HUB24 Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to HUB24; or
- (i) any member of the HUB24 Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (h) above insofar as it applies to the member of the HUB24 Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;

provided that a HUB24 Prescribed Occurrence will not include any matter:

- (j) required to be done or procured by the HUB24 Group under this agreement, the Share Scheme or the Option Scheme;
- (k) required by law or by an order of a court or Governmental Agency;
- (l) to the extent it is Fairly Disclosed in filings of HUB24 with the ASX in the 24 months on or prior to the date of this agreement;
- (m) to the extent it is Fairly Disclosed in the HUB24 Due Diligence Material;
- (n) to the extent that it relates to transactions between entities within the HUB24 Group; or
- (o) the undertaking of which Xplore has previously approved in writing.

HUB24 Related Person means, in respect of HUB24:

- (a) a Related Body Corporate of HUB24; and
- (b) any director, officer, member or employee of HUB24 or of a Related Body Corporate of HUB24.

HUB24 Share means an issued fully paid ordinary share in the capital of HUB24.

HUB24 Warranties means the representations and warranties of HUB24 set out in clause 10.1.

Implementation Date means, with respect to the Share Scheme or the Option Scheme, the later of:

- (a) the fifth Business Day following the Share Scheme Record Date or the Option Scheme Record Date (as relevant); or
- (b) such other Business Day as the parties agree.

Independent Expert means an expert, independent of the parties, engaged by Xplore in good faith to prepare the Independent Expert's Report.

Independent Expert's Report means the report from the Independent Expert commissioned by Xplore for inclusion in the Explanatory Booklet, which includes a statement or opinion from the Independent Expert on whether:

- (a) the Share Scheme is in the best interest of Xplore Shareholders; and
- (b) the Option Scheme is in the best interest of Xplore Optionholders; and

includes any update of that report by the Independent Expert.

Ineligible Shares means the total number of Scheme Shares held by Foreign Scheme Shareholders and Small Shareholders.

Insolvency Event means in relation to a person:

- (a) **insolvency official**: the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements**: the entry by the person into a scheme of arrangement (other than the Share Scheme or the Option Scheme) or composition with its creditors or takes similar actions as a result of which the entity's assets are, or are proposed to be, submitted to the control of its creditors;
- (c) **winding up**: the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments**: the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **ceasing business**: the person ceases or threatens to cease to carry on business;
- (f) **insolvency**: the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **deregistration**: the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement**: the person executing a deed of company arrangement;
- (i) **person as trustee or partner**: the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **analogous events**: anything analogous to those set out in any of paragraphs (a) to (i) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

Interest Rate means the Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

Investigating Accountant means the accountant appointed by Xplore in accordance with clause 7.1(d).

Investigating Accountant's Report means the report prepared by the Investigating Accountant for inclusion in the Explanatory Booklet.

Listing Rules means the official listing rules of ASX as amended from time to time.

Material Adverse Change means:

- (a) an event or circumstance (including a change in law) that occurs, is announced or becomes known to HUB24 or the Xplore Board (in each case whether or not it becomes

public) after the date of this agreement which has or could reasonably be expected to have individually or when aggregated with all such events or circumstances the effect of:

- (i) materially diminishing the net assets of the Xplore Group; or
 - (ii) materially reducing the revenue of the Xplore Group; or
 - (iii) resulting in the business of the Xplore Group being unable to be carried on in substantially the same manner as it is carried on at the date of this agreement,
- (b) the All Ordinaries Index falling and remaining more than 25% below the closing level on the date of this agreement;

but does not include any event or circumstance:

- (c) required to be done or procured by Xplore under this agreement, the Share Scheme or the Option Scheme;
- (d) which HUB24 has previously approved in writing;
- (e) to the extent that:
 - (i) it was Fairly Disclosed in the Due Diligence Materials;
 - (ii) it was Fairly Disclosed in documents that were publicly available prior to the date which is 2 Business Days prior to the date of this agreement from public filings of Xplore with ASX or ASIC or public registers; or
 - (iii) it was within the actual knowledge of HUB24 or a HUB24 Related Person as at the date of this agreement, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this agreement:
 - (A) Andrew Alcock; and
 - (B) Jason Entwistle; or
- (f) arising from or relating to:
 - (i) a change in applicable Accounting Standards or the interpretation of Accounting Standards; or
 - (ii) any acts of war (whether or not declared), terrorism, natural disaster or pandemic (including, but not limited to, the COVID-19 global pandemic).

Material Contracts means the contracts identified as material contracts as agreed in writing by the parties on or before the date of this agreement.

Maximum Cash Election has the meaning given in the definition of Election.

Maximum Scrip Election has the meaning given in the definition of Election.

No Election Shares means the total number of Scheme Shares which are not held by Foreign Scheme Shareholders or Small Shareholders and in respect of which either:

- (a) no valid Election is made on or before the Election Date; or
- (b) a valid Election is made on or before the Election Date but are subsequently transferred or sold after the Election Date to the effect that under the Share Scheme they are treated as not being subject to a valid Election.

Option Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Xplore and Scheme Optionholders in respect of all Scheme Options, substantially in the form set out in Schedule 4 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by Xplore and HUB24, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by each party.

Option Scheme Consideration means the consideration to be paid to Scheme Optionholder for the cancellation of each Scheme Option as specified in the Option Scheme.

Option Scheme Deed Poll means the deed poll to be executed by HUB24 prior to the First Court Date in relation to the Option Scheme, in the form set out in Schedule 5 or in such other form as is acceptable to Xplore acting reasonably

Option Scheme Meeting means the meeting of the Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Option Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Option Scheme Record Date means 7.00pm on the second Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Proposed Transaction means:

- (a) the proposed acquisition by HUB24 in accordance with the terms and conditions of this agreement, of all of the Xplore Shares through the implementation of the Share Scheme and all of the Xplore Options through the implementation of the Option Scheme; and
- (b) all associated transactions and steps contemplated by this agreement.

Proxy Cut-Off Date means the last day on or before which proxies must be lodged for the Share Scheme Meeting.

Regulatory Approvals means the approvals set out in clause 3.1(a).

Related Body Corporate of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Interest has the meaning given in the Corporations Act.

RG 60 means Regulatory Guide 60 issued by ASIC on 22 September 2011.

RSEL means a Registrable Superannuation Entity Licence.

Scheme Option means an Xplore Option on issue as at the Option Scheme Record Date.

Scheme Optionholder means a person who holds one or more Scheme Options.

Scheme Share means a Xplore Share on issue as at the Share Scheme Record Date.

Scheme Shareholder means a person who holds one or more Scheme Shares.

Scrip Consideration means 0.00926746 HUB24 Consideration Share per Scheme Share.

Scrip Election Shares means the number of Scheme Shares in respect of which Scrip Consideration are to be issued under paragraph (a)(i) of the definition of Share Scheme Consideration (after the operation of the scale back adjustment in paragraph (b) of the definition of Share Scheme Consideration).

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Share Scheme and/or the Option Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard.

Senior Manager means the chief executive officer, chief financial officer/chief operating officer, chief risk officer and head of IT of Xplore.

Share Cap means the number of Xplore Shares representing 50% of all Xplore Shares on issue as at the Share Scheme Record Date (rounded down to the nearest whole Xplore Share) less the amount equal to 50% of the No Election Shares.

Share Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Xplore and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 2 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by Xplore and HUB24, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by each party.

Share Scheme Consideration in respect of a Scheme Shareholder means:

- (a) if the Scheme Shareholder is not a Foreign Scheme Shareholder or a Small Shareholder and has made a valid Election on or before the Election Date, then
- (i) if the Scheme Shareholder has made a Maximum Scrip Election, subject to paragraph (b), the Scrip Consideration multiplied by each Scheme Share held by the Scheme Shareholder; or
 - (ii) if the Scheme Shareholder has made a Maximum Cash Election, subject to paragraph (c), the Cash Consideration multiplied by every Scheme Share held by the Scheme Shareholder;
- (b) if the total number of Scheme Shares in respect of which Scrip Consideration are to be issued in aggregate under paragraph (a)(i) exceeds the Share Cap, then the number of Scheme Shares in respect of which Scrip Consideration are to be issued under paragraph (a)(i) will be subject to a scale back adjustment as set out below:
- (i) Scrip Consideration for the number of Scheme Shares calculated as:
 $(B/A) \times C$,
where:
 - A = the total number of Scheme Shares in respect of which Scrip Consideration are to be issued under paragraph (a)(i);
 - B = the Share Cap; and
 - C = the number of Scheme Shares held by the Scheme Shareholder in respect of which Scrip Consideration are to be issued under paragraph (a)(i); and
 - (ii) the Cash Consideration for each of the Scheme Shares held by the Scheme Shareholder less the number of Scheme Shares held by the Scheme Shareholder in respect of which Scrip Consideration are to be issued as calculated in accordance with paragraph (b)(i);
- (c) if the total number of Scheme Shares in respect of which cash is to be paid as Scheme Consideration under paragraph (a)(ii) in aggregate exceeds the Cash Consideration Share Cap, then number of Scheme Shares in respect of which cash is to be paid as Scheme Consideration under paragraph (a)(ii) will be subject to a scale back adjustment as set out below:
- (i) the Cash Consideration for the number of Scheme Shares calculated as:
 $(B/A) \times C$,
where:
 - A = the total number of Scheme Shares in respect of which cash is to be paid as Scheme Consideration under paragraph (a)(ii);
 - B = the Cash Consideration Share Cap; and
 - C = the number of Scheme Shares held by the Scheme Shareholder in respect of which cash is to be paid as Scheme Consideration under paragraph (a)(ii); and
 - (ii) the Scrip Consideration for each Scheme Share held by the Scheme Shareholder less the number of Scheme Shares held by the Scheme Shareholder in respect of which cash is to be paid as calculated in accordance with paragraph (c)(i);
- (d) if the Scheme Shareholder is not a Foreign Scheme Shareholder or a Small Shareholder and has not made a valid Election on or before the Election Date:
- (i) in relation to 50% of their Scheme Shares, the Scrip Consideration for each Scheme Share held by the Scheme Shareholder; and
 - (ii) in relation to 50% of their Scheme Shares, the Cash Consideration for each Scheme Share held by the Scheme Shareholder,

unless the total number of Ineligible Shares less the number of Xplore Shares representing 10% of all Xplore Shares on issue as at the Share Scheme Record Date (rounded down to the nearest whole Xplore Share) exceed the Scrip Election Shares, in which case:

(iii) the number of Scheme Shares in respect of which cash is to be paid as Scheme Consideration under paragraph (d)(ii) will be subject to a scale back adjustment as set out below:

(A) the Cash Consideration for the number of Scheme Shares calculated as:

$$(B/A) \times C,$$

where:

A = 50% of the No Election Shares

B = the greater of zero and the sum of G + (50% multiplied by the sum of (D+E-F))

C = the number of Scheme Shares held by the Scheme Shareholder in respect of which cash is to be paid as Scheme Consideration under paragraph (d)(ii);

D = the No Election Shares;

E = the Scrip Election Shares;

F = the Ineligible Shares; and

G = the number of Xplore Shares representing 10% of all Xplore Shares on issue as at the Share Scheme Record Date rounded down to the nearest whole Xplore Share,

provided that B does not exceed A. If B exceeds A, then the scale back adjustment in this paragraph (d)(iii) will not apply; and

(B) the Scrip Consideration for each Scheme Share held by the Scheme Shareholder less the number of Scheme Shares held by the Scheme Shareholder in respect of which cash is to be paid as calculated in accordance with paragraph (d)(iii); or

(e) if the Scheme Shareholder is a Foreign Scheme Shareholder or a Small Shareholder, the Cash Consideration for each Scheme Share held by the Scheme Shareholder.

Share Scheme Deed Poll means the deed poll to be executed by HUB24 prior to the First Court Date in relation to the Share Scheme, in the form set out in Schedule 3 or in such other form as is acceptable to Xplore acting reasonably, provided that where HUB24 nominates a HUB24 Nominee in accordance with clause 2(c), the Share Scheme Deed Poll must provide for the HUB24 Nominee to have the primary obligations under the Share Scheme Deed Poll.

Share Scheme Meeting means the meeting of Xplore Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Share Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Share Scheme Record Date means, in respect of the Share Scheme, 7.00pm on the second Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Share Splitting means the splitting by a holder of Xplore Shares into two or more parcels of Xplore Shares whether or not it results in any change in beneficial ownership of the Xplore Shares.

Small Shareholder means a Scheme Shareholder who is entitled to receive HUB24 Consideration Shares equal to a value of less than \$500 (or such other amount as may be agreed between HUB24 and Xplore) on the Share Scheme Record Date, whether or not the Scheme Shareholder has made an Election.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which in the determination of the Xplore Board acting in good faith in order to satisfy what the Xplore Board considers to be its fiduciary or statutory duties (after having taken advice from their legal and financial advisers):

- (a) is reasonably likely to be completed in accordance with its terms, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Xplore Shareholders as a whole than the Proposed Transaction, taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty and timing.

Tax means any tax, levy, charge, impost, fee, deduction, offset (including research and development tax offsets), goods and services tax, payroll tax, superannuation guarantee, fringe benefits tax, compulsory loan, PAYG instalment and withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

Timetable means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the parties.

Xplore Break Fee has the meaning given to that term in clause 14.3(a).

Xplore Board means the board of directors of Xplore (or any committee of the board of directors of Xplore constituted to consider the Proposed Transaction on behalf of Xplore).

Xplore Director means a director of Xplore.

Xplore Group means Xplore and its Subsidiaries.

Xplore Information means information to be included by Xplore in the Explanatory Booklet that explains the effect of the Share Scheme and the Option Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Xplore Shareholders and Xplore Optionholder whether or not to vote in favour of the Share Scheme or the Option Scheme (as applicable), being information that is within the knowledge of the Xplore Board and has not previously been disclosed to Xplore Shareholders and Xplore Optionholders, other than the HUB24 Information, the Independent Expert's Report and the Investigating Accountant's Report.

Xplore Option means an option granted by Xplore under the Xplore Option Plan to acquire by way of issue one or more Xplore Shares but does not include a performance right.

Xplore Optionholder means the person who is recorded in the register maintained by Xplore under section 168(1) of the Corporations Act as the holder of Xplore Options.

Xplore Option Plan means collectively:

- (a) the Xplore Executive Share Option Plan; or
- (b) the Xplore Employee Share Option Plan,

in each case in the form as Fairly Disclosed in the Due Diligence Material.

Xplore Parties means each member of the Xplore Group and its Related Bodies Corporate and Authorised Persons.

Xplore Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

- (a) Xplore converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Xplore Group resolves to reduce its share capital in any way;
- (c) any member of the Xplore Group:
 - (i) enters into a buy-back agreement; or

- (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Xplore Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option other than under the valid exercise of an option on issue immediately before the date of this agreement that has been Fairly Disclosed in the Due Diligence Material;
- (e) any member of the Xplore Group issues, or agrees to issue, convertible notes;
- (f) any member of the Xplore Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the Xplore Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to any member of the Xplore Group;
- (i) Xplore pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution;
- (j) any member of the Xplore Group makes any change to its constitution or convenes a meeting to consider a resolution to change a constitution of any member of the Xplore Group;
- (k) any member of the Xplore Group ceases, or threatens to cease to, carry on the business conducted as at the date of this agreement;
- (l) any member of the Xplore Group (other than a dormant, non-operating member of the Xplore Group) being deregistered as a company or being otherwise dissolved;
- (m) any disposal of shares or securities by a member of the Xplore Group in any member of the Xplore Group other than to a member of the Xplore Group; or
- (n) any member of the Xplore Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (m) inclusive above insofar as it applies to the member of the Xplore Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;

provided that a Xplore Prescribed Occurrence will not include any matter:

- (o) required to be done or procured by the Xplore Group under this agreement, the Share Scheme or the Option Scheme;
- (p) required by law or by an order of a court or Governmental Agency;
- (q) to the extent it is Fairly Disclosed in filings of Xplore with the ASX in the 24 months prior to the date of this agreement;
- (r) (except in relation to paragraph (d) above), to the extent it is Fairly Disclosed in the Due Diligence Materials; or
- (s) the undertaking of which HUB24 has previously approved in writing.

Xplore Register means the register of shareholders maintained by Xplore under section 168(1) of the Corporations Act.

Xplore Share means an issued fully paid ordinary share in the capital of Xplore.

Xplore Shareholder means each person who is registered in the register maintained by Xplore under section 168(1) of the Corporations Act as a holder of Xplore Shares.

Xplore Warranties means the representations and warranties of Xplore set out in clause 10.4.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;

- For personal use only
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
 - (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
 - (g) a reference to time is to Sydney, New South Wales time;
 - (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
 - (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
 - (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
 - (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
 - (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
 - (p) a reference to **Fairly Disclosed** means disclosed to a party or any of their respective Authorised Persons to a sufficient extent and in sufficient detail so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction to identify the nature and scope of the relevant matter, event or circumstance.

1.3 Headings

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

1.4 Business Day

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

1.5 Consents or approvals

If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless provided otherwise.

1.6 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.7 Reasonable endeavours

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

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
 - (b) to commence any legal action or proceeding against any person,
- except where that provision specifies otherwise.

2. Agreement to propose Share Scheme and Option Scheme

- (a) Xplore agrees to propose and implement the Share Scheme and the Option Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (b) Subject to clauses 2(c) and 2(d), HUB24 agrees to assist Xplore in proposing and implementing the Share Scheme and the Option Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (c) HUB24 expects that the entity that acquires the Scheme Shares under the Share Scheme will be a wholly-owned Subsidiary of HUB24 incorporated in Australia, but may nominate any wholly-owned Subsidiary of HUB24 (**HUB24 Nominee**) to acquire the Scheme Shares by giving written notice to Xplore on or before the date that is 5 Business Days before the First Court Date.
- (d) If HUB24 nominates the HUB24 Nominee to acquire the Scheme Shares under the Share Scheme, then:
 - (i) references in this agreement to HUB24 are to be read as references to the HUB24 Nominee;
 - (ii) HUB24 must procure that the HUB24 Nominee complies with the obligations of HUB24 under this agreement and under the Share Scheme and enter into a deed of accession on terms acceptable to the Xplore, acting reasonably; and
 - (iii) any such nomination will not relieve HUB24 of its obligations under this agreement, including the obligation to pay (or procure the payment by the HUB24 Nominee of) the Share Scheme Consideration in accordance with the terms of the Share Scheme.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Share Scheme

Subject to this clause 3, the Share Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Share Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals):**
 - (i) **(ASIC and ASX)** before the Delivery Time on the Second Court Date, ASIC and ASX issue or provide such consents or approvals as are necessary or which Xplore and HUB24 agree are necessary or desirable to implement the Share Scheme and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date; and
 - (ii) **(Other Governmental Authorities)** before the Delivery Time on the Second Court Date, each other relevant Governmental Agency issue or provide such consents, waivers, approvals which HUB24 and Xplore consider are necessary or desirable to

implement the Share Scheme (noting that if such consents waivers/and/or approvals are subject to conditions those conditions must be acceptable to the parties (each acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;

- (b) **(No Xplore Prescribed Occurrence)** no Xplore Prescribed Occurrence occurs between the date of this agreement and the Delivery Time on the Second Court Date;
- (c) **(No HUB24 Prescribed Occurrence)** no HUB24 Prescribed Occurrence occurs between the date of this agreement and the Delivery Time on the Second Court Date;
- (d) **(No regulatory intervention)** before the Delivery Time on the Second Court Date, there is no intervention by ASIC in respect of the AFSLs held by any member of the Xplore Group or by APRA in respect of any RSEL held by any member of the Xplore Group that is reasonably likely to result in:
 - (i) the Xplore Group or any member of the Xplore Group being unable to carry out its business in all material respects; or
 - (ii) any material financial impact on any member of the Xplore Group that are AFSL or RSEL holders;
- (e) **(Xplore Warranties)** the Xplore Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time on the Second Court Date;
- (f) **(HUB24 Warranties)** the HUB24 Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time on the Second Court Date;
- (g) **(Shareholder approval)** the Share Scheme is approved by Xplore Shareholders at the Share Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (h) **(Court approval)** the Share Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably); and
- (i) **(No Material Adverse Change)** no Material Adverse Change occurs between the date of this agreement and the Delivery Time on the Second Court Date;
- (j) **(Restraining orders)** no judgment, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Governmental Agency of competent jurisdiction in Australia remains in effect as at the Delivery Time on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Share Scheme; and
- (k) **(Third party consents)** all consents, approvals or waivers of rights by parties other than Xplore under any Material Contracts that are necessary or desirable are obtained in a form and subject to conditions acceptable to HUB24 (acting reasonably), and such consents, approvals or waivers have not been withdrawn, cancelled or revoked before the Delivery Time on the Second Court Date.

3.2 Benefit and waiver of conditions precedent

- (a) The Condition in clause 3.1(a) (Regulatory Approvals) is for the benefit of each party and any breach or non-fulfilment of it may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.1(b) (No Xplore Prescribed Occurrences), 3.1(d) (No regulatory intervention); 3.1(e) (Xplore Warranties), 3.1(i) (No Material Adverse Change), 3.1(j) (No restraining orders), and 3.1(k) (Third party consents) are for the sole benefit of HUB24 and any breach or non-fulfilment of them may only be waived by HUB24 giving its written consent.
- (c) The Conditions in clauses 3.1(c) (No HUB24 Prescribed Occurrences) and 3.1(f) (HUB24 Warranties) are for the sole benefit of Xplore and any breach or non-fulfilment of them may only be waived by Xplore giving its written consent.

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- (d) A party entitled to waive a Condition under this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time on the Second Court Date. The Conditions in clauses 3.1(g) (Shareholder approval) and 3.1(h) (Court approval) cannot be waived.
 - (e) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Conditions to Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Option Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals):**
 - (i) **(ASIC and ASX)** before the Delivery Time on the Second Court Date, ASIC and ASX issue or provide such consents or approvals as are necessary or which Xplore and HUB24 agree are necessary or desirable to implement the Option Scheme and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date; and
 - (ii) **(Other Governmental Authorities)** before the Delivery Time on the Second Court Date, each other relevant Governmental Agency issue or provide such consents, waivers, approvals which HUB24 and Xplore consider are necessary or desirable to implement the Option Scheme (noting that if such consents waivers/and/or approvals are subject to conditions those conditions must be acceptable to the parties (each acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
- (b) **(Share Scheme):** the Share Scheme becoming Effective;
- (c) **(Optionholder approval)** the Option Scheme is approved by Xplore Optionholders at the Option Scheme Meeting by the majority required under section 411(4)(a)(i) of the Corporations Act; and
- (d) **(Court approval)** the Option Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably).

3.4 Option Scheme - Benefit and waiver of conditions precedent

- (a) The Conditions in clause 3.3(a)(Regulatory Approvals) are for the benefit of each party and any breach or non-fulfilment of them may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.3(b) (Share Scheme Effective), 3.3(c) (Optionholder approval) and 3.3(d) (Court approval) cannot be waived.
- (c) A party entitled to waive a Condition under this clause 3.4 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time on the Second Court Date.
- (d) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.4, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived

3.5 Reasonable endeavours

- (a) Xplore and HUB24 will use their respective reasonable endeavours to procure that each of the Conditions (as applicable) is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).

- (b) Without limiting clauses 3.6 and 3.7 below, each of Xplore and HUB24 must:
- (i) consult and co-operate fully with the other party in relation to the satisfaction of the Conditions, including in relation to all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (ii) promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals and all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (iii) take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - (iv) respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time;
 - (v) provide the other with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals; and
 - (vi) so far as it is able, allow the other and its Authorised Persons the opportunity to be present and make submissions at any meetings with any regulatory body relating to the Regulatory Approvals in respect of the Share Scheme and the Option Scheme, provided that:
 - (vii) the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant; and
 - (viii) neither party is required to disclose materially commercially sensitive information to the other party.

3.6 Notifications

Each of HUB24 and Xplore must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.5).

3.7 Certificate

- (a) At or before the hearing on the Second Court Date, in respect of the Share Scheme:
 - (i) HUB24 and Xplore will provide a joint certificate to the Court confirming whether or not the Condition set out in clause 3.1(a) (Regulatory Approvals) has been satisfied or waived in accordance with the terms of this agreement;
 - (ii) Xplore will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(b) (No Xplore Prescribed Occurrences), 3.1(d) (No regulatory intervention); 3.1(e) (Xplore Warranties), 3.1(g) (Shareholder approval), 3.1(i) (No Material Adverse Change), 3.1(j) (No restraining orders) and 3.1(k) (Third party consents) have been satisfied or waived in accordance with the terms of this agreement;
 - (iii) HUB24 will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(c) (No HUB24 Prescribed Occurrences) and 3.1(f) (HUB24 Warranties) have been satisfied or waived in accordance with the terms of this agreement;

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- (iv) Xplore will provide a certificate to HUB24 confirming whether or not Xplore has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breaches; and
 - (v) HUB24 will provide a certificate to Xplore confirming whether or not HUB24 has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breaches.
- (b) At or before the hearing on the Second Court Date, in respect of the Option Scheme:
- (i) HUB24 and Xplore will provide a joint certificate to the Court confirming whether or not the Condition set out in clause 3.3(a) (Regulatory Approvals) has been satisfied or waived in accordance with the terms of this agreement; and
 - (ii) Xplore will provide a certificate to the Court confirming whether or not the Condition set out in clause 3.3(c) (Optionholder approval), has been satisfied.

3.8 Share Scheme voted down

If the Share Scheme is not approved by Xplore Shareholders at the Share Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and HUB24 considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Xplore must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Share Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as Counsel engaged by Xplore to represent it in Court proceedings related to the Share Scheme, in consultation with HUB24, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

3.9 Conditions not capable of being fulfilled

- (a) If:
 - (i) any Condition is not satisfied or (where capable of waiver) waived by the date specified in this agreement for its satisfaction (or an event occurs which would or is likely to prevent a condition precedent being satisfied by the date specified in this agreement);
 - (ii) a circumstance occurs with the result that a Condition is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within 5 Business Days after the occurrence of the circumstance; or
 - (iii) it becomes more likely than not that the Share Scheme does not become Effective by the End Date,then Xplore and HUB24 must consult in good faith with a view to determining whether:
 - (i) the Share Scheme may proceed by way of alternative means or methods;
 - (ii) to extend the relevant time or date for satisfaction of the Condition;
 - (iii) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Share Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - (iv) to extend the End Date.
- (b) Subject to clause 3.9(c), if a Condition becomes incapable of being satisfied before the End Date and Xplore and HUB24 are unable to reach agreement under clause 3.9(a) within 10 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:

- (i) in relation to the Conditions in clauses 3.1(a) (Regulatory Approval) and 3.1(g) (Shareholder approval), either HUB24 or Xplore may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone;
- (ii) in relation to the Conditions in clauses 3.1(b) (No Xplore Prescribed Occurrences), 3.1(d) (No regulatory intervention); 3.1(e) (Xplore Warranties), 3.1(i) (No Material Adverse Change), 3.1(j) (No restraining orders), and 3.1(k) (Third party consents), HUB24 may terminate this agreement by giving Xplore notice without any liability to any party by reason of that termination alone; and
- (iii) in relation to the Conditions in clauses 3.1(c) (No HUB24 Prescribed Occurrences) and 3.1(f) (HUB24 Warranties), Xplore may terminate this agreement by giving HUB24 notice without any liability to any other party by reason of that termination alone.
- (c) A party will not be entitled to terminate this agreement under clause 3.9(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this agreement by that party; or
- (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

3.10 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- (a) in the case of a Condition relating to a Regulatory Approval – the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases – there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this agreement).

4. Share Scheme Structure

4.1 Share Scheme

- (a) Xplore must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose the Share Scheme under which, subject to the Share Scheme becoming Effective, all of the Scheme Shares will be transferred to HUB24 and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Share Scheme Record Date, the Share Scheme Consideration.
- (b) Xplore must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Share Scheme without the prior written consent of HUB24.

4.2 Share Scheme Consideration

HUB24 covenants in favour of Xplore (in Xplore's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to HUB24 of the Scheme Shares under the terms of the Share Scheme), on the Implementation Date, HUB24 will:

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

4.3 Allotment and issue of HUB24 Consideration Shares

- (a) Subject to the Share Scheme becoming Effective, HUB24 must:

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- (i) in accordance with the Deed Poll, issue the HUB24 Consideration Shares to the Scheme Shareholders in accordance with the Share Scheme on terms that each HUB24 Consideration will rank equally in all respects with each other HUB24 Share then on issue;
 - (ii) ensure that on issue each HUB24 Consideration Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of HUB24);
 - (iii) use all reasonable endeavours to ensure that such HUB24 Consideration Shares are, from the Business Day following the date the Share Scheme becomes Effective (or such later date as ASX requires), quoted for trading on the ASX initially on a deferred settlement basis and thereafter on an ordinary settlement basis.
- (b) To facilitate the issue of the HUB24 Consideration Shares to Scheme Shareholders, Xplore must provide to HUB24, or procure the provision to HUB24 of, a complete copy of the Xplore register of members as at the Share Scheme Record Date (which must include the name, address and registered holding of each Scheme Shareholder as at the Share Scheme Record Date together with details of all valid Elections received from Scheme Shareholders), within two Business Days after the Share Scheme Record Date. The details and information to be provided under this clause must be provided in such form as HUB24, its Advisers or share registry may reasonably require.
 - (c) HUB24 will not issue any HUB24 Consideration Shares to Foreign Scheme Shareholders.
 - (d) Any fractional entitlement of the Scheme Shareholder to a part of a HUB24 Consideration Share will be rounded down to the nearest whole number of HUB24 Consideration Shares.

4.4 Share Scheme Deed Poll

HUB24 covenants in favour of Xplore (in Xplore's own right and separately as trustee for each of the Scheme Shareholders) to execute, deliver and perform the Share Scheme Deed Poll prior to the dispatch of the Explanatory Booklet.

5. Option Scheme structure

5.1 Option Scheme

- (a) Xplore must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose a creditors' scheme of arrangement, to be conducted concurrently with the Share Scheme under which all outstanding Scheme Options will be cancelled and each Scheme Optionholder will be entitled to receive the Option Scheme Consideration.
- (b) Xplore must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of HUB24.

5.2 Option Scheme Consideration

- (a) HUB24 covenants in favour of Xplore (in Xplore's own right and separately as trustee for each Scheme Optionholder) that, in consideration of the cancellation of each Scheme Options under the terms of the Option Scheme, on the Implementation Date, HUB24 will pay each Scheme Optionholder the Option Scheme Consideration in accordance with the Option Scheme.
- (b) Subject to the Option Scheme becoming Effective, at 10.00am on the Implementation Date, the transactions which form part of the Option Scheme will be implemented as follows:
 - (i) all existing Scheme Options at the Option Scheme Record Date will be cancelled and each Scheme Optionholder will release Xplore from all claims and liabilities in respect of the Scheme Optionholder's Scheme Options; and

- (ii) in exchange, each Scheme Optionholder will receive the Option Scheme Consideration for each Scheme Option held by that Scheme Optionholder at the Option Scheme Record Date.
- (c) In order to facilitate the payment of the Option Scheme Consideration, Xplore must provide, or procure the provision of, to HUB24 a complete copy of the Xplore Register as at the Option Scheme Record Date (which must include the name, registered address and registered holding of each Scheme Optionholder as at the Option Scheme Record Date), within one Business Day after the Option Scheme Record Date. The details and information to be provided under this clause must be provided in such form as HUB24 or HUB24's share registry may reasonably require, as notified to Xplore by HUB24 prior to the Option Scheme Record Date.

5.3 Option Scheme Deed Poll

HUB24 covenants in favour of Xplore (in Xplore's own right and separately as trustee for each of the Scheme Optionholders) to execute, deliver and perform the Option Scheme Deed Poll prior to the dispatch of the Explanatory Booklet.

5.4 Option Scheme conditional

The Option Scheme is conditional on the Share Scheme becoming Effective.

5.5 Exercise of Xplore Options

From the date of this agreement up to the Implementation Date, if Xplore receives any cash payment from an Xplore Optionholder as a result of the exercise of any Xplore Options (including any Xplore Options granted after the date of this agreement), Xplore must ensure that such cash payment is deposited into a special purpose escrow account, from which payments may only be made with the prior written consent of HUB24, which such consent not being unreasonably withheld or delayed.

6. Recommendation, intentions and announcements

6.1 Xplore Board Recommendation and Voting Intention

- (a) Subject to clause 6.2, Xplore must ensure that its Announcement and the Explanatory Booklet state that each Xplore Director:
- (i) considers:
- (A) the Share Scheme to be in the best interest of Xplore Shareholders and that the Xplore Director recommends that Xplore Shareholders vote in favour of the Share Scheme; and
 - (B) the Option Scheme is in the best interest of Xplore Optionholders and that the Xplore Director recommends that Xplore Optionholders vote in favour of the Option Scheme,
- (Recommendation); and**
- (ii) intends to cause:
- (A) any Xplore Shares in which it has a Relevant Interest to be voted in favour of the Share Scheme; and
 - (B) any Xplore Option in which it has a Relevant Interest to be voted in favour of the Option Scheme,

(Voting Intention),

in each case qualified only by words to the effect of:

- (iii) *'in the absence of a Superior Proposal'*; and
- (iv) other than in respect of the Explanatory Booklet, *'subject to the Independent Expert concluding that the Share Scheme is in the best interest of Xplore Shareholders*

and the Option Scheme is in the best interest of Xplore Optionholders ' and in respect of the Explanatory Booklet and any public document issued after the Explanatory Booklet, 'subject to the Independent Expert continuing to conclude that the Share Scheme is in the best interest of Xplore Shareholders and the Option Scheme is in the best interest of Xplore Optionholders'.

- (b) Subject to clause 6.2, Xplore must ensure that the Xplore Board collectively, and the members of the Xplore Board individually, do not change, withdraw or modify its, his or her Recommendation or Voting Intention unless:
- (i) Xplore has received, other than as a result of a breach of clause 16, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Xplore, an announcement has been made which attracts section 631(1) of the Corporations Act; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Share Scheme is not in the best interest of the Xplore Shareholders,

and Xplore has complied with its obligations under clause 16 (including ensuring that all of HUB24's rights under clause 16.8 have been exhausted).

6.2 Exclusion from Recommendation

The obligation of Xplore under clause 6.1 to ensure that each Xplore Director provides and maintains the Recommendation is qualified to the extent that any Xplore Director considers, after first obtaining written advice from independent senior counsel of the New South Wales bar, that he or she should not provide or continue to maintain any recommendation (positive or adverse) because that Xplore Director has an interest in the Share Scheme that is so materially different from other Xplore Shareholders which would properly preclude or render it inappropriate for him or her to provide any such recommendation.

6.3 Confirmation

Xplore represents and warrants to HUB24 that each Xplore Director has confirmed his or her agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 6.1(b).

6.4 Promotion of Share Scheme and Option Scheme

During the Exclusivity Period, Xplore must procure that the Senior Managers of Xplore or its Related Bodies Corporate, as reasonably requested by HUB24 and as agreed by Xplore, participate in efforts to promote the merits of the Share Scheme and the Option Scheme, including:

- (a) meeting with key Xplore Shareholders and Xplore Optionholders;
- (b) communicating with Xplore's employees, customers and suppliers and the employees, customers and suppliers of Xplore's Related Bodies Corporate; and
- (c) communicating with the public to promote the merits of the Share Scheme and Option Scheme, subject only to:
 - (i) the Independent Expert not having concluded in the Independent Expert's Report that the Share Scheme and the Option Scheme is not in the best interest of Xplore Shareholders; and
 - (ii) there being no Superior Proposal.

7. Proposed Transaction – parties' respective implementation obligations

7.1 Xplore's obligations

Xplore must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Share Scheme and the Option Scheme as soon as reasonably practicable and after the date of this agreement and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(Explanatory Booklet)** prepare the Explanatory Booklet in accordance with clause 7.3;
- (b) **(Independent Expert)** promptly appoint the Independent Expert to prepare the Independent Expert's Report and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(review of draft Independent Expert's Report)** on receipt from the Independent Expert, provide HUB24 with the draft report received from the Independent Expert for factual accuracy review (noting in each case that any draft of the Independent Expert's Report provided to HUB24 for review will not include those sections containing the Independent Expert's opinion), and promptly give to the Independent Expert any comments that HUB24 provides Xplore in relation to factual matters regarding HUB24 in any draft of the Independent Expert's Report;
- (d) **(Investigating Accountant)** promptly appoint an investigating accountant (acceptable to Xplore and HUB24) **(Investigating Accountant)** to review the financial information included in the Explanatory Booklet and assist with the preparation of the pro forma historical accounts and provide all assistance and information reasonably requested by the Investigating Accountant in connection with the preparation of the Investigating Accountant's Report for inclusion in the Explanatory Booklet;
- (e) **(approval of draft for ASIC and ASX)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the Xplore Board, or of a committee of the Xplore Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the Listing Rules;
- (f) **(liaison with ASIC and ASX)** as soon as reasonably practicable after the date of this agreement and otherwise in accordance with the Timetable:
 - (i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with clauses 7.1(e) and 7.2(f), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the Listing Rules; and
 - (ii) liaise with ASIC and ASX during the period of their respective consideration of that draft of the Explanatory Booklet and keep HUB24 reasonably informed of any matters raised by ASIC or ASX in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with HUB24, to resolve any such matters (provided that, where any matters relate to HUB24 Information, Xplore must not take any steps to address them without the prior written consent of HUB24, not to be unreasonably withheld or delayed);
- (g) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the Xplore Board, or of a committee of the Xplore Board appointed for the purpose, is held to consider approving the Explanatory Booklet for dispatch to the Xplore Shareholders and the Xplore Optionholders, subject to orders of the Court under section 411(1) of the Corporations Act;

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- (h) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Share Scheme and the Option Scheme;
 - (i) **(confirmation of no objection from ASX)** request ASX to confirm that it has no objection to the draft Explanatory Booklet;
 - (j) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 7.1(g) and 7.2(g) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Xplora to convene the Share Scheme Meeting and the Option Scheme Meeting;
 - (k) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Share Scheme in accordance with section 412(6) of the Corporations Act;
 - (l) **(information):**
 - (i) provide reasonable information about the Share Scheme, the Option Scheme, the Xplora Shareholders and the Xplora Optionholders to HUB24 and its Related Bodies Corporate, which HUB24 requests and reasonably requires in order to:
 - (A) canvass views on the Share Scheme by Xplora Shareholders and the Option Scheme by Xplora Optionholders;
 - (B) facilitate the provision by, or on behalf of, HUB24 of the Share Scheme Consideration and the Option Scheme Consideration; or
 - (C) review the tally of proxy appointments and directions received by Xplora before the Share Scheme Meeting and the Option Scheme Meeting;
 - (ii) within 5 Business Days after the date of this agreement, provide HUB24 with:
 - (A) a copy of the Xplora Register as at the date of this agreement to the extent doing so does not breach applicable privacy laws; and
 - (B) the most recently available information in Xplora's possession regarding the beneficial ownership of Xplora Shares and Xplora Options including a copy of the most recent beneficial ownership analysis report received by Xplora (which, for the avoidance of doubt, may be as at a date prior to the date of this agreement);
 - (iii) provide HUB24:
 - (A) on a fortnightly basis, a copy of the latest Xplora Register; and
 - (B) on a fortnightly basis, the most recently available information in Xplora's possession regarding the beneficial ownership of Xplora Shares and Xplora Options including a copy of the most recent beneficial ownership analysis report received by Xplora,

provided that if the Xplora Register or any beneficial ownership analysis report is received by Xplora more frequently than on a fortnightly basis Xplora must provide HUB24 with a copy of each such report after it is received by Xplora;
 - (m) **(convene Share Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Xplora Shareholders and convening and holding the Share Scheme Meeting;
 - (n) **(convene Option Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Xplora Optionholders and convening and holding the Option Scheme Meeting;
 - (o) **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Share Scheme Meeting and the Option Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act or, where clause 3.8 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the

Business Day immediately following the Share Scheme Meeting and the Option Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Share Scheme and the Option Scheme;

- (p) (**appeal process**) if the Court refuses to make any orders directing Xplore to convene the Share Scheme Meeting or the Option Scheme Meeting or approving the Share Scheme or the Option Scheme Meeting, Xplore and HUB24 must:
- (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (q) (**implementation of Share Scheme**) if the Share Scheme is approved by the Court:
- (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Share Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Share Scheme Consideration as at the Share Scheme Record Date in accordance with the Share Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to HUB24 on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Share Scheme and the orders of the Court approving the Share Scheme;
- (r) (**implementation of Option Scheme**) if the Option Scheme is approved by the Court:
- (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Option Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Option Scheme Consideration as at the Option Scheme Record Date in accordance with the Option Scheme;
 - (iii) cancel the Scheme Options on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Option Scheme and the orders of the Court approving the Option Scheme;
- (s) (**Regulatory notifications**) in relation to the Regulatory Approvals, lodge with any Governmental Agency within the relevant periods all documentation and filings required by law to be so lodged by Xplore in relation to the Proposed Transaction;
- (t) (**HUB24 Information**) without the prior written consent of HUB24, not use the HUB24 Information for any purposes other than those contemplated by this agreement or the Share Scheme;
- (u) (**Documents**) consult with HUB24 in relation to the content of the documents required for the purpose of the Share Scheme and the Option Scheme including originating process, affidavits, submissions and draft minutes of Court orders;
- (v) (**Shareholder support**) In consultation with HUB24, promote to its shareholders the merits of the Share Scheme and encourage Xplore Shareholders to vote on the Share Scheme in accordance with the recommendation of the Xplore Board, including soliciting proxy votes in favour of the Share Scheme and, if requested to do so by HUB24, engage a proxy solicitation firm to assist in soliciting proxy votes (and Xplore may independently decide to appoint a proxy solicitation firm after consulting in good faith with HUB24);
- (w) (**Optionholder support**) In consultation with HUB24, promote to its optionholders the merits of the Option Scheme and encourage Xplore Optionholders to vote on the Option Scheme in accordance with the recommendation of the Xplore Board, including soliciting proxy votes in favour of the Option Scheme and, if requested to do so by HUB24, engage

a proxy solicitation firm to assist in soliciting proxy votes (and Xplore may independently decide to appoint a proxy solicitation firm after consulting in good faith with HUB24);

- (x) (**quotation of Xplore Shares and ASX listing**) apply to ASX:
 - (i) to have trading in Xplore Shares suspended from the close of trading on the Effective Date; and
 - (ii) to have Xplore removed from the official list of ASX from:
 - (A) the close of trading on the Business Day immediately following the Implementation Date; or
 - (B) such other later date after the Implementation Date to be determined by HUB24; and
- (y) (**Compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

7.2 HUB24's obligations

HUB24 must take all steps reasonably necessary to assist Xplore to implement the Share Scheme and the Option Scheme as soon as reasonably practicable and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) (**HUB24 Information**) provide to Xplore, in a form appropriate for inclusion in the Explanatory Booklet, all HUB24 Information that is required by all applicable law, the Listing Rules and ASIC Regulatory Guides for inclusion in the Explanatory Booklet, which information must without limiting the above:
 - (i) contain all information necessary to enable Xplore to ensure that the Explanatory Booklet complies with the requirements of RG 60;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) (**Regulatory notifications**) in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by HUB24 in relation to the Proposed Transaction;
- (c) (**Independent Expert**) promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (d) (**Investigating Accountant**) promptly provide all assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report for inclusion in the Explanatory Booklet;
- (e) (**review of Explanatory Booklet**) as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Xplore and provide comments on those drafts in good faith;
- (f) (**approval of draft for ASIC and ASX**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the appropriate representatives of HUB24 is held to consider approving those sections of that draft that relate to HUB24 as being in a form appropriate for provision to ASIC and ASX for review;
- (g) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the appropriate representatives of HUB24 is held to consider approving those sections of the Explanatory Booklet that relate to HUB24 as being in a form appropriate for

dispatch to Xplore Shareholders and Xplore Optionholders, subject to approval of the Court;

- (h) (**Representation**) procure that HUB24 is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (i) (**promote the Proposed Transaction**) if requested by Xplore, participate in reasonable efforts to promote the merits of the Proposed Transaction, the Share Scheme Consideration and the Option Scheme Consideration;
- (j) (**Xplore Information**) without the prior written consent of Xplore, not use Xplore Information for any purposes other than those contemplated by this agreement, the Share Scheme or the Option Scheme; and
- (k) (**Compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

7.3 Explanatory Booklet – preparation principles

- (a) As soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, Xplore must prepare the Explanatory Booklet in compliance with:
 - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
 - (ii) this clause 7.3.
- (b) The Explanatory Booklet will include:
 - (i) the terms of the Share Scheme and the Option Scheme;
 - (ii) the notice of Share Scheme Meeting, the notice of Option Scheme Meeting and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Share Scheme and the Option Scheme, together with proxy forms for the Share Scheme Meeting and the Option Scheme Meeting and for any ancillary meeting;
 - (iii) the Xplore Information;
 - (iv) the HUB24 Information;
 - (v) a copy of this agreement (without the schedules or annexures);
 - (vi) a copy of the executed Share Scheme Deed Poll;
 - (vii) a copy of the executed Option Scheme Deed Poll;
 - (viii) a copy of the Independent's Expert Report; and
 - (ix) a copy of the Investigating Accountant's Report.
- (c) The Explanatory Booklet must include a statement that:
 - (i) other than the HUB24 Information and the Independent Expert's Report, the Explanatory Booklet has been prepared by Xplore and is the responsibility of Xplore, and that HUB24 assumes no responsibility for the accuracy or completeness of the Explanatory Booklet (other than HUB24 Information); and
 - (ii) the HUB24 Information has been provided by HUB24 and is the responsibility of HUB24, and Xplore assumes no responsibility for the accuracy or completeness of the HUB24 Information.
- (d) Xplore must make available to HUB24 drafts of the Explanatory Booklet (excluding any part of the draft of the Independent Expert's Report which contains the Independent Expert's opinion), consult with HUB24 in relation to the content of those drafts (other than the HUB24 Information), and consider in good faith, for the purpose of amending those drafts, comments from HUB24 on those drafts. HUB24 acknowledges and agrees that Xplore has ultimate discretion with respect to the preparation, form and content of the

Explanatory Booklet, other than as provided in this agreement with respect to the HUB24 Information.

- (e) Xplore must seek approval from HUB24 for the form and context in which the HUB24 Information appears in the Explanatory Booklet, which approval HUB24 must not unreasonably withhold or delay, and Xplore must not lodge the Explanatory Booklet with ASIC until such approval is obtained from HUB24.
- (f) If Xplore and HUB24 disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If complete agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the HUB24 Information, the Xplore Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet; and
 - (ii) if the disagreement relates to the form or content of the HUB24 Information, Xplore will make such amendments to the form or content of the disputed part of the HUB24 Information as HUB24 reasonably requires.
- (g) Xplore must take all reasonable steps to ensure that the Explanatory Booklet (other than the HUB24 Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to Xplore Shareholders and Xplore Optionholders.
- (h) HUB24 must take all reasonable steps to ensure that the HUB24 Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to Xplore Shareholders and Xplore Optionholders.
- (i) Xplore must provide to HUB24 all such further or new information of which Xplore becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting and the Option Scheme Meeting where this is or may be necessary to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (j) HUB24 must provide to Xplore all such further or new information of which HUB24 becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting and the Option Scheme Meeting where this is or may be necessary to ensure that the HUB24 Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (k) Xplore and HUB24 each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Share Scheme and the Option Scheme are in the interests of Xplore Shareholders and HUB24 and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 7.3 and to implement the Share Scheme and the Option Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

8. Conduct of business before the Implementation Date

8.1 Conduct of Xplore business

- (a) Subject to clause 8.2(a), from the date of this agreement up to and including the Implementation Date, Xplore must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
 - (i) operate those businesses consistent with past practice, in substantially the same manner as previously conducted in the 12 month period prior to the date of this agreement and use its reasonable endeavours to operate those businesses generally and materially consistent with the business plan and budget for the Xplore Group for the 2021 financial year, disclosed in the Due Diligence Materials;

- (ii) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
 - (iii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
 - (iv) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Xplore Group is a party, and with laws, authorisations and licences applicable to each member of the Xplore Group; and
 - (v) not take or fail to take any action that constitutes a Xplore Prescribed Occurrence or that could reasonably be expected to result in a Xplore Prescribed Occurrence.
- (b) Without limiting clause 8.1(a) but subject to clause 8.2(a), Xplore must not, and must procure that its Subsidiaries do not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- (i) incur any additional Financial Indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the Xplore Group, other than in the usual and ordinary course of business and consistent with past practice;
 - (ii) other than as approved in writing by HUB24 (not to be unreasonably withheld or delayed), amend or take any action that:
 - (A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; or
 - (B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of,

any Financial Indebtedness to which one or more members of the Xplore Group are a party
 - (iii) make any change to its constitution;
 - (iv) (except as required by law or as provided in an existing contract in place as at the date of this agreement) enter into or make any material change to the terms of employment of (including increasing the remuneration or compensation of), any person, including an officer, director, executive or other employee, whose total employment cost exceeds \$200,000 per annum (**Key Person**);
 - (v) increase the remuneration or compensation of any person, including an officer, director, executive or other employee of the Xplore Group that would result in an increase of \$250,000 (in aggregate) other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Materials;
 - (vi) amend the terms of the Xplore Option Plan or any option, performance right, incentive or share plan;
 - (vii) accelerate the rights of any of their employees to compensation or benefits of any kind (including under the Xplore Option Plan, any option, performance right, incentive or share plan) for, in aggregate, in excess of \$100,000;
 - (viii) terminate or encourage the resignation of a Key Person, except for cause (acting reasonably) in accordance with contractual arrangements in effect on the date of this agreement or otherwise in accordance with current personnel practices;
 - (ix) pay any of its officers, directors, executives or other employees a bonus payment, a severance, termination or retention payment in excess of \$250,000 (in aggregate), other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Materials;

- For personal use only
- (x) make any concession or acknowledgment in respect of, or vary any pattern of work of, any employee or group of employees that is reasonably expected to give rise to a future potential claim, dispute or liability for the Xplore Group that may reasonably give rise to potential costs or liability of more than \$100,000 in aggregate for all such potential costs or liabilities;
 - (xi) settle or compromise any dispute, audit on inquiry in relation to tax or duty or amends any tax return, other than in the ordinary course of its business;
 - (xii) commence, threaten in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding that relates to potential costs or liability of more than \$100,000 (after allowing for insurance recoveries), other than pursuing debts in the ordinary course of business;
 - (xiii) (except under contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Materials) enter into any enterprise bargaining agreement or similar collective employment agreement;
 - (xiv) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$100,000, individually or when aggregated with all such businesses, real property, entities or undertakings the subject of the transaction or series of related or similar transactions;
 - (xv) incur or enter into commitments involving capital expenditure of more than \$200,000 whether in one transaction or a series of related transactions;
 - (xvi) to the extent reasonably practicable, not proceed with the platform consolidation program known as "OnePlatform" (or commit to undertake that matter or incur any capital or operational expenditure) without first consulting with HUB24;
 - (xvii) enter into, vary or terminate any contract, joint venture, partnership or commitment for a duration of over 2 years involving total expenditure greater than \$100,000 per year, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments;
 - (xviii) enter into, vary or terminate any contract, joint venture, partnership or commitment (or any series of related contracts, joint ventures, partnerships or commitments):
 - (A) involving total expenditure greater than \$100,000, individually or when aggregated with all such related contracts, joint ventures, partnerships or commitments;
 - (B) waiving any third party default which has a financial impact upon the Xplore Group, or accepting as a compromise anything less than the full compensation due to the Xplore Group, in each case where the applicable expenditure or impact is or will be in excess of \$100,000 in any financial year;
 - (C) restraining any material member of the Xplore Group from competing with any person or conducting activities in any market; or
 - (D) with any related entity of any member of the Xplore Group (other than a member of the Xplore Group);
 - (xix) enter into any new financing arrangement, agreement or otherwise provide financial accommodation other than with members of the Xplore Group (irrespective of what form that accommodation takes), or amend the terms of any existing financing arrangement, agreement or instrument;
 - (xx) write-down any of its material assets other than in accordance with the Accounting Standards;
 - (xxi) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges or interest rate hedges (including basis swaps on interest

rates, such that the net period for the floating interest on the swaps is the same period as the net floating interest period on the relevant loan) made in the ordinary course of business consistent with past practice and in accordance with existing policy as at the date of this agreement;

- (xxii) pay, incur or agree to pay or incur transaction costs (being any investment banking, financial adviser, legal, accounting, share registry and other costs payable to other advisers or third party service providers, and any payments to employees that relate directly to the Proposed Transaction such as deal or retention bonuses) other than in accordance with the transaction cost estimates and arrangements Fairly Disclosed in the Due Diligence Material prior to the date of this agreement;
- (xxiii) issue, or agree to issue, or grant an option to subscribe for, debentures (as defined in section 9 of the Corporations Act) other than under an existing financing arrangement which has been Fairly Disclosed in the Due Diligence Materials;
- (xxiv) alter in any material respect any accounting policy of any member of the Xplore Group other than any change required by the Accounting Standards; or
- (xxv) amend in a material respect or terminate any existing shareholders agreement, joint venture agreement or other similar investor agreements or arrangements, or enter into any shareholders agreement, joint venture agreement or other similar investor agreement or arrangement.

8.2 Permitted activities

- (a) The obligations of Xplore under clause 8.1 do not apply in respect of any matter:
 - (i) undertaken by a member of the Xplore Group in conducting its businesses in the usual and ordinary course and consistent with past practice;
 - (ii) required to be done or procured by Xplore or its Subsidiaries under, or which is otherwise contemplated by, this agreement, the Share Scheme or the Option Scheme;
 - (iii) required by law or by an order of a court or Governmental Agency;
 - (iv) subject to clause 8.2(b), Fairly Disclosed in the Due Diligence Material or in documents that were publicly available in the 24 months prior to the date of this agreement from public filings of Xplore with ASX, ASIC or public registers as being actions that the Xplore Group may carry out between the date of this agreement and the Implementation Date;
 - (v) the undertaking of which HUB24 has approved in writing (which approval must not be unreasonably withheld or delayed);
 - (vi) required in order to comply with any Law relating to Tax, including to pay any Tax when due; or
 - (vii) which, in the reasonable opinion of Xplore, is a reasonable and prudent response to an emergency or disaster (including, but not limited to an epidemic or pandemic or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property) and it is impractical to seek the approval of HUB24 prior to giving effect to the response.
- (b) Xplore must, in respect of any matter referred to in clause 8.2(a)(iv) above that it proposes to undertake:
 - (i) to the extent reasonably practicable, not undertake that matter (or commit to undertake that matter) without first consulting with HUB24; and
 - (ii) promptly provide HUB24 with any information regarding the matter reasonably requested by HUB24.

Clause 8.2(b) does not operate to provide HUB24 with a veto right in respect of any matter referred to in clause 8.2(a)(iv).

8.3 Access

- (a) In the period from the date of this agreement to the Implementation Date, Xplore must:
- (i) procure that at least three members of Xplore's executive management team meet with representatives of HUB24 on a fortnightly basis to assist with, among other things:
 - (A) keeping HUB24 fully informed of the matters contemplated by clause 8.3(a)(ii) below; and
 - (B) providing HUB24 with access to information and people it has requested under clause 8.3(a)(iii) below;
 - (ii) keep HUB24 fully informed of all material developments relating to the Xplore Group and provide to HUB24 monthly management, financial and operational reports provided to the Xplore Board;
 - (iii) promptly following a reasonable request by HUB24, provide HUB24 (and its Authorised Persons) with access to:
 - (A) documents and information relating to the Xplore Group; and
 - (B) directors, executives and Senior Managers of the Xplore Group (as agreed with Xplore from time to time),for the purpose of or in connection with:
 - (C) planning the transition of the Xplore Group and other matters relating to the conduct of the Xplore Group following the Implementation Date;
 - (D) the financing arrangements in respect of the Proposed Transaction, including any refinancing of existing financial indebtedness of the Xplore Group;
 - (E) holding discussions with third parties, with the consent of Xplore (such consent not to be unreasonably withheld or delayed) that HUB24 and its Authorised Persons reasonably wish to enter into with respect to the Proposed Transaction prior to the Implementation Date, including procuring that employees of any member of Xplore Group participate in such discussions; and
 - (F) otherwise facilitating the Proposed Transaction;
 - (iv) provide HUB24 with complete copies of monthly accounts of the Xplore Group prepared by management of the Xplore Group to the extent such accounts are prepared (which must be prepared in accordance with IFRS, AIFRS or GAAP (as applicable) applied to the entities on a basis consistent with past practice) as soon as practicable after those materials have been provided to the Xplore Board.
- (b) Nothing in this clause 8.3 obliges Xplore to do anything, or to provide to HUB24 or its Authorised Persons any information:
- (i) which would cause undue disruption to the operation of its business in the ordinary course;
 - (ii) concerning the Xplore Directors' consideration of the Share Scheme and the Option Scheme; or
 - (iii) which would breach any applicable law (including privacy and competition laws), or any obligation of confidentiality to any person or result in the loss of legal professional privilege.
- (c) Xplore will provide reasonable assistance to HUB24 for the purpose of satisfying Xplore's obligations under this clause 8.3 but nothing in this clause 8.3 requires Xplore to provide access to its people or documentation or to take any other action which would involve refreshing or updating the Due Diligence Material or which would disrupt the usual and ordinary course of Xplore's businesses and operations.

8.4 Change of control rights

In respect of Material Contracts:

- (a) the parties will seek to identify any change of control or similar provisions, or any consent, approval or notification requirements in any Material Contract which would be triggered by the implementation of the Proposed Transaction;
- (b) the parties will use their reasonable endeavours to agree a proposed strategy to obtain any approvals or consents required pursuant to clause 8.4(a) and, if agreed, Xplore will then contact the relevant counterparties to these contracts to request that they provide any consent required in relation to the Proposed Transaction (including confirmation that they will not terminate those contracts due to a change in control of Xplore as a result of the implementation of the Proposed Transaction);
- (c) Xplore must use reasonable endeavours to obtain the consents referred to in clause 8.4(a) in accordance with the agreed strategy as expeditiously as possible and, in any event, prior to the Second Court Date and to ensure that once obtained, the consents are not withdrawn, cancelled or revoked, including by:
 - (i) cooperating with, and doing all things reasonably requested by, Xplore, HUB24 or the counterparty to a Material Contract;
 - (ii) promptly provide any information reasonably required by a counterparty to a Material Contract, including providing any information requested by Xplore or those counterparties from HUB24 or in relation to a HUB24 Related Person; and
 - (iii) make representatives of Xplore available, where necessary, to meet with counterparties to Material Contracts to deal with issues arising in relation to the change of control of Xplore.
- (d) HUB24 must cooperate with, and provide any assistance (including providing factual information regarding HUB24 and attending relevant meetings), reasonably requested by Xplore for the purposes of Xplore complying with its obligations under this clause 8.4, except that HUB24 is not responsible for any costs incurred in connection with any application for or granting of consent from the counterparties to the Material Contracts.
- (e) Xplore must not, without the prior written consent of HUB24 which must not be unreasonably withheld or delayed, incur any costs other than reasonable travel and legal expenses in connection with performing its obligations under this clause.

8.5 Financing arrangements

- (a) Between the date of this agreement and the Implementation Date, Xplore must provide assistance requested by HUB24 in connection with any repayment of financial indebtedness of the Xplore Group that HUB24 may reasonably require in connection with the Proposed Transaction, including:
 - (i) liaising with its creditors to obtain information on any of the Xplore Group's financial indebtedness or security interests granted by any of them;
 - (ii) providing HUB24 with information reasonably requested by HUB24 in relation to use of existing cash reserves of the Xplore Group for such purpose;
 - (iii) issuing repayment notices in relation to the existing Xplore Group debt facilities; and
 - (iv) using reasonable endeavours to procure discharge of registrations on the Personal Property Securities Register from secured parties in relation to any security interests granted by a member of the Xplore Group in favour of that party in connection with the existing debt facilities (if any).
- (b) Subject to confidentiality arrangements reasonably acceptable to Xplore, Xplore agrees to provide reasonable assistance in connection with the arrangement or syndication of any debt financings by any member of the HUB24 Group (**Transaction Financing**) as may be reasonably requested by HUB24 and from time to time, including:

- (i) furnishing HUB24 and the financing sources of HUB24 Group within a reasonable timeframe with financial and other pertinent information regarding the Xplore Group or an entity in which any member of the Xplore Group has an investment, as may be reasonably requested by HUB24;
- (ii) providing reasonable information in relation to acquisitions proposed to be made by the Xplore Group after the date of this agreement;
- (iii) providing reasonable assistance in facilitating the grant of security over shares and units held by the Xplore Group Members in connection with the Transaction Financing; and
- (iv) providing reasonable information required to complete a reconciliation of financial statements to applicable accounting standards,

provided, in each case, that no Xplore Group Member will be required to incur any liability in connection with any Transaction Financing (other than remuneration of its employees) prior to implementation of the Share Scheme that is not reimbursable by HUB24.

- (c) Nothing in this clause 8.5 will require co-operation to the extent that it would cause any Condition to not be satisfied or otherwise cause a breach of this agreement.

9. Actions on and following Implementation Date

9.1 Reconstitution of the board of each member of the Xplore Group

- (a) On the Implementation Date, but subject to the Share Scheme Consideration having been paid in full to Xplore or provided by HUB24 and receipt by Xplore of signed consents to act, Xplore must take all actions necessary (and in accordance with the constitution of the Xplore Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by HUB24 as new Xplore Directors and new directors of each Subsidiary.
- (b) Without limiting clause 9.1(a), on the Implementation Date, but subject to receipt by Xplore of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any member of the Xplore Group, Xplore must procure that:
 - (i) all outgoing Xplore Directors resign from the Xplore Board; and
 - (ii) all outgoing directors of each Subsidiary of Xplore resigns from their office.

9.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Share Scheme will be implemented in the following sequence:

- (a) HUB24 will deposit (or procure the deposit) of the Cash Consideration into the specified Xplore trust account in accordance with the Share Scheme;
- (b) HUB24 will deposit (or procure the deposit) of the Option Scheme Consideration into the specified Xplore trust account in accordance with the Option Scheme
- (c) Xplore will commence the distribution of the Cash Consideration to Scheme Shareholders in accordance with the Share Scheme;
- (d) HUB24 will issue the Scrip Consideration to relevant Scheme Shareholders in accordance with the Share Scheme;
- (e) Xplore will commence the distribution of the Option Scheme Consideration to Scheme Optionholders in accordance with the Option Scheme;
- (f) the Xplore Board and the board of each Subsidiary of Xplore will be reconstituted in accordance with clause 9.1;
- (g) HUB24 will acquire all of the Scheme Shares in accordance with the Share Scheme;
- (h) the Scheme Options will be cancelled in accordance with the Option Scheme; and
- (i) Xplore will apply to ASX to be removed from the official list of ASX.

10. Representations and warranties

10.1 HUB24 representations

- (a) HUB24 represents and warrants to Xplore (on Xplore's own behalf and separately as trustee for each of the other Xplore Parties) each of the matters set out in clause 10.1(b) as at the date of this agreement and on each subsequent day until the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) HUB24 represents and warrants that:
- (i) HUB24 is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and HUB24 has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on it and this agreement does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which HUB24 is a party or is bound;
 - (iv) the HUB24 Information provided to Xplore in accordance with clause 7.2(a) for inclusion in the Explanatory Booklet will:
 - (A) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (B) be provided on the understanding that each of the Xplore Indemnified Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Share Scheme in accordance with the requirements of the Corporations Act;
 - (v) all information provided by or on behalf of HUB24 to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report;
 - (vi) all information provided by or on behalf of HUB24 to the Investigating Accountant to enable the Investigating Accountant's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Investigating Accountant will rely upon that information for the purposes of preparing the Investigating Accountant's Report;
 - (vii) as at the date the Explanatory Booklet is dispatched to Xplore Shareholders, the HUB24 Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (viii) HUB24 will, as a continuing obligation, provide to Xplore all such further or new information which may arise after the Explanatory Booklet has been dispatched until the date of the Share Scheme Meeting and the Option Scheme Meeting which is necessary to ensure that the HUB24 Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);
 - (ix) all factual information HUB24 has provided to Xplore prior to this agreement is, to the best of HUB24's knowledge, accurate in all material respects and not misleading in any material respect;
 - (x) HUB24's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice

financial statements and, so far as HUB24 is aware, there has not been any event, change, effect or development which would require HUB24 to restate its financial statements as disclosed to the ASX;

- (xi) each member of the HUB24 Group has all material licenses and permits necessary for it to conduct its business;
- (xii) as at the date of this agreement, neither ASIC nor ASX (as applicable) has commenced court proceedings against any member of the HUB24 Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules;
- (xiii) no HUB24 Prescribed Occurrence has occurred;
- (xiv) as at the date of this agreement, no shareholder approval of HUB24 is required to complete the Proposed Transaction;
- (xv) as at the date of this agreement, the total issued capital of HUB24 is:
 - (A) 63,144,728 HUB24 Shares;
 - (B) 1,415,040 issued options; and
 - (C) 826,305 performance rights,and there are no other HUB24 options, warrants, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing) other than under an employment contract or an employee incentive scheme in place as the date of this agreement;
- (xvi) as at the date of this agreement, HUB24 is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to Xplore on or before the date of this agreement that a reasonable person would expect to have a material effect on the price or value of HUB24 Shares;
- (xvii) the HUB24 Due Diligence Materials have been collated and disclosed in good faith for the purposes of a due diligence process and in this context and, so far as HUB24 is aware after due enquiry, the HUB24 Due Diligence Materials are true, complete and accurate and not misleading or deceptive in any material respect, including by omission;
- (xviii) as at the date of this agreement HUB24 has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy HUB24's obligation to pay the Cash Consideration in accordance with its obligations under this agreement, the Share Scheme, the Option Scheme, the Share Scheme Deed Poll and the Option Scheme Deed Poll;
- (xix) by the Delivery Time on the Second Court Date, HUB24 will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of HUB24) sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy HUB24's obligation to pay the Cash Consideration in accordance with its obligations under this agreement, the Share Scheme, the Option Scheme, the Share Scheme Deed Poll and the Option Scheme Deed Poll;
- (xx) HUB24 will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding including debt and equity financing arrangements or a combination of both) to satisfy HUB24's obligation to pay the Cash Consideration in accordance with its obligations under this agreement, the Share Scheme, the Option Scheme, the Share Scheme Deed Poll and the Option Scheme and the Deed Poll; and

- (xxi) between the date of this agreement and the Share Scheme Record Date, HUB24 will not, and will procure that each other member of the HUB24 Group does not, enter into any arrangement under which it obtains the beneficial interest in any Shares, unless the Shares are registered in the name of HUB24.

10.2 HUB24's indemnity

HUB24 agrees with Xplore (on Xplore's own behalf and separately as trustee or nominee for each of the other Xplore Parties) to indemnify and keep indemnified the Xplore Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Xplore Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 10.1(a) or 10.1(b).

10.3 Qualifications on HUB24's representations, warranties and indemnities

The representations and warranties in clause 10.1 and the indemnity in clause 10.2 are each subject to matters which:

- (a) are expressly provided for in this agreement;
- (b) have been Fairly Disclosed in:
 - (i) the HUB24 Due Diligence Materials; and
 - (ii) HUB24's announcements to ASX, or a publicly available document lodged with ASIC, in the 24 month period on or prior to the date of this agreement; or
- (c) are within the actual knowledge of Xplore, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which an Xplore Director is actually aware as at the date of this agreement.

10.4 Xplore representations

- (a) Xplore represents and warrants to HUB24 (on its own behalf and separately as trustee for each of the HUB24 Parties) each of the matters set out in clause 10.4(b) as at the date of this agreement and on each subsequent day until on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Xplore represents and warrants that:
 - (i) Xplore is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement by Xplore has been properly authorised by all necessary corporate action and Xplore has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on Xplore and the execution of this agreement of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Xplore or any of its Subsidiaries is a party or to which they are bound;
 - (iv) the Xplore Information contained in the Explanatory Booklet will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
 - (v) as at the date the Explanatory Booklet is dispatched to Xplore Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the HUB24 Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vi) as at the date of this agreement, Xplore is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the

Proposed Transaction or as disclosed in writing to HUB24 on or before the date of this agreement) that a reasonable person would expect to have a material effect on the price or value of Xplore Shares;

- (vii) as at the date of this agreement, the total issued capital of Xplore is:
- (A) 297,536,240 Xplore Shares; and
 - (B) 11,066,049 Xplore Options,
- and, apart from the 11,506,400 Xplore Options to be issued to Xplore employees and executives following release of the Announcements, there are no other Xplore options, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing);
- (viii) between 4 September 2020 and the date of this agreement Xplore has not taken any action, or failed to take any action which if it had taken, or failed to take (as applicable) after the date of this agreement it would have been a breach of clause 8 of this agreement (subject to any matter permitted under clause 8.2) or constituted either a Xplore Prescribed Occurrence or a Material Adverse Change;
- (ix) at the date of this agreement, there is no judgment, injunction, order or decree binding on any member of the Xplore Group that has or would be likely to have the effect of prohibiting, materially restricting or materially impairing after the Effective Date any business of Xplore Group as presently being conducted;
- (x) as at the date of this agreement, no member of the Xplore Group, nor the assets, properties or business of any member of the Xplore Group, is subject to any judgment, order, writ, injunction or decree of any court, Governmental Agency or arbitration tribunal and so far as Xplore is aware:
- (A) there are no material actions, suits, arbitrations, legal or administrative proceedings pending against any member of the Xplore Group; and
 - (B) no member of the Xplore Group is the subject of any pending investigation, other than as Fairly Disclosed in the Due Diligence Materials;
- (xi) there is no material breach by Xplore or any of its Authorised Persons of any Australian or foreign law or regulation applicable to them or order of any Australian or foreign Governmental Agency having jurisdiction over them that:
- (A) has or could reasonably be expected to have a materially adverse implication in relation to:
 - (I) the conduct of the business of the Xplore Group;
 - (II) the value of the Xplore Group; or
 - (III) the reputation of the Xplore Group, including any implication in relation to its good standing with any Governmental Agency having jurisdiction over the conduct of business of the Xplore Group; or
 - (B) has resulted or could reasonably be expected to result in any in criminal liability of any member of the Xplore Group involving proof of intention or any criminal penalty exceeding \$20,000;
- (xii) so far as the Xplore Board and the senior management of any member of the Xplore Group are aware after due and diligent inquiry, there is no material breach by Xplore or any of its Authorised Persons of any Australian or foreign law or regulation applicable to them or order of any Australian or foreign Governmental Agency having jurisdiction over them, which breach, alone or together with any other breaches of law, has or could reasonably be expected to have the effect of causing:
- (A) any contract to be terminable or terminated;

- (B) Xplore or any of its Authorised Persons to be restricted in doing business in any jurisdiction or with any customer or supplier, or being subject to criminal liability; or
- (C) any other material adverse effect on the Xplore Group;
- (xiii) each member of the Xplore Group has all material licenses and permits necessary for it to conduct its business;
- (xiv) as at the date of this agreement, neither ASIC nor ASX (as applicable) has made a determination against any member of the Xplore Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules;
- (xv) during the 5 year period prior to the date of this agreement, no member of the Xplore Group nor, to the Xplore Group's knowledge, any of the officers, directors, employees, agents, intermediaries, representatives, suppliers or joint venture partners of any member of the Xplore Group has, directly or indirectly, in connection with the business of the Xplore Group:
 - (A) requested, received, made, offered, authorised, solicited or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;
 - (B) requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
 - (C) requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
 - (D) established or maintained any unlawful fund of corporate monies or other properties;
 - (E) created or caused the creation of any false or inaccurate books and records of any member of the Xplore Group related to any of the foregoing;
 - (F) otherwise directly or indirectly violated any local or international anti-corruption or anti-bribery law (including, without limitation, the US Foreign Corrupt Practices Act of 1977 as amended and the UK Bribery Act of 2010) applicable to the Xplore Group; or
 - (G) have sold or purchased goods or services from, or otherwise engaged in any such transaction with, any person in Cuba, Iran, the Democratic Republic of Korea, Syria, Sudan or the Crimea Region of Ukraine and no such sales, purchases or other transactions are pending or have any outstanding obligations involving any person in Cuba, Iran, the Democratic Republic of Korea, Syria, Sudan or the Crimea Region of Ukraine;
- (xvi) during the five year period prior to the date of this agreement, no current or former director or officer of any member of the Xplore Group is or was a Sanctioned Person and, so far as Xplore is aware, no member of the Xplore Group or any of their respective current or former employees or their respective intermediaries is or was a Sanctioned Person. For the purposes of this representation, a Sanctioned Person means:
 - (A) any person listed in any sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom, Canada, or Australia;

(B) any person operating organised or resided in a U.S Sanctioned Country (including Iran, Syria, Sudan, Cuba, the Democratic Republic of Korea, or the Crimea Region of Ukraine); or

(C) any person owned or controlled by any such person.

- (xvii) Xplore's financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Xplore is aware, there has not been any event, change, effect or development which would require Xplore to restate its financial statements as disclosed to ASX;
- (xviii) there is no security interest over all or any of its or its Subsidiaries' present or future assets or revenues of its business or its Subsidiaries' businesses;
- (xix) Xplore has provided all information relating to the expected availability, terms likely to apply to and any material development that would be reasonably likely to adversely affect any Financial Indebtedness or debt arrangements of the Xplore Group, from or after the date of this agreement;
- (xx) Xplore has provided complete and accurate information regarding fee levels in all retainers and mandates with Advisers and fee estimates for other advisers in relation to the Proposed Transaction, any Competing Proposals as at the date of this agreement and any other transaction where such retainer or mandate is current, or under which the Xplore Group still has obligations;
- (xxi) the Due Diligence Materials have been disclosed in good faith and, so far as the Xplore Board and the senior management of Xplore are aware after due enquiry, Xplore has not knowingly or recklessly:
- (A) omitted anything from such information such as to make any part of that information materially false or misleading; or
- (B) included anything materially false or misleading in such information;
- (xxii) so far as Xplore is aware, the Due Diligence Materials contain sufficient information for HUB24 to identify each third party to whom a member of the Xplore Group is required to give notice, or from whom a member of the Xplore Group is required to obtain consent or approval under a contract to which a member of the Xplore Group is a party, in connection with this document or the transactions contemplated by it (including in respect of the change of control of Xplore resulting from the implementation of the Proposed Transaction), except where the failure to give such notice to or obtain such consent or approval from (as applicable) the relevant third party could not reasonably be expected to give rise to a material liability on the part of any member of the Xplore Group;
- (xxiii) as at the date of this agreement, Xplore is not aware of any facts or circumstances that will cause a third party, as a result of the entry into this document and the implementation of either the Proposed Transaction to exercise a right to terminate a contract which is material to the business of the Xplore Group or vary the performance of any material obligation of Xplore under any such contract or exercise a right to acquire, or require the disposal of, any material assets of the Xplore Group;
- (xxiv) as at the date of this agreement, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to Xplore or another Xplore Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this agreement or under the Share Scheme; and
- (xxv) Xplore is not aware of any information relating to the Xplore Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this agreement that has or could reasonably be expected to give rise to a Material Adverse Change that has not been Fairly Disclosed in an announcement by Xplore to ASX or in the Due Diligence Materials.

10.5 Xplore's indemnity

Xplore agrees with HUB24 (on HUB24's own behalf and separately as trustee for each of the HUB24 Parties) to indemnify and keep indemnified the HUB24 Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the HBU24 Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 10.4(a) or 10.4(b).

10.6 Qualifications on Xplore's representations, warranties and indemnities

The representations and warranties in clause 10.4 and the indemnity in clause 10.5 are each subject to matters which:

- (a) are expressly provided for in this agreement;
- (b) have been Fairly Disclosed in:
 - (i) the Due Diligence Materials; and
 - (ii) Xplore's announcements to ASX, or a publicly available document lodged with ASIC, in the 24 month period prior to the date of this agreement;
- (c) are within the actual knowledge of HUB24 as at the date of this agreement, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this agreement:
 - (i) Andrew Alcock; and
 - (ii) Jason Entwistle.

10.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 10.

10.8 Survival of representations

Each representation and warranty in clauses 10.1 and 10.4:

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

10.9 Survival of indemnities

Each indemnity in this agreement (including those in clauses 10.2 and 10.5) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this agreement; and
- (d) survive the termination of this agreement.

11. Releases

11.1 Xplore Parties

- (a) Without limiting HUB24's rights under clause 10, HUB24 (for itself and as agent of every member of the HUB24 Group) releases all rights against and agrees with Xplore that it will not make a Claim against, any Xplore Party (other than Xplore) in connection with:
- (i) Xplore's execution or delivery of this agreement;
 - (ii) any breach of any representation, covenant and warranty of Xplore in this agreement;
 - (iii) the implementation of the Share Scheme or the Option Scheme; or
 - (iv) any disclosure made by any Xplore Party including in the Due Diligence Material that contains any statement which is false or misleading whether in content or by omission,
- except to the extent the relevant Xplore Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Xplore receives and holds the benefit of this clause as trustee for each other Xplore Party.

11.2 HUB24 Parties

- (a) Without limiting Xplore's rights under clause 10, Xplore releases its rights against, and agrees with HUB24 that it will not make a Claim against any HUB24 Party (other than HUB24) in connection with:
- (i) HUB24's execution or delivery of this agreement;
 - (ii) any breach of any representation, covenant and warranty of HUB24 in this agreement;
 - (iii) the implementation of the Share Scheme or the Option Scheme; or
 - (iv) any disclosure made by any HUB24 Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent that the relevant HUB24 Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. HUB24 receives and holds the benefit of this clause as trustee for each other HUB24 Party.

11.3 Deeds of indemnity

- (a) Subject to the Share Scheme becoming Effective, HUB24 undertakes in favour of Xplore and each other person who is a Xplore Party that it will:
- (i) subject to clause 11.3(d), for 7 years from the Implementation Date, ensure that the constitutions of Xplore and each other member of the Xplore Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Xplore Group; and
 - (ii) procure that Xplore and each other member of the Xplore Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The undertakings contained in clause 11.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.

- (c) Xplore receives and holds for the benefit of clause 11.3(a), to the extent it relates to the other Xplore Parties, as trustee for them.
- (d) The undertakings contained in clause 11.3(a) are given:
- (i) in the case of clause 11.3(a)(i), until the earlier of 7 years from the Implementation Date or the relevant member of the Xplore Group ceasing to be part of the HUB24 Group; or
 - (ii) in the case of clause 11.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer or the relevant member of the Xplore Group ceasing to be part of the HUB24 Group.

11.4 Directors' and officers' insurance

HUB24 acknowledges that Xplore will in respect of Xplore and all other members of the Xplore Group:

- (a) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for Xplore and all other members of the Xplore Group (**Policy**) to be extended for a further 12 months after consulting in good faith with HUB24 regarding the cost and terms of the Policy (including if the cost of the Policy is materially higher than the cost of the Policy currently in effect, consulting in good faith with HUB24 regarding possible alternative coverage solutions);
- (b) undertake a tender process in accordance with clause 11.4(c) for the directors' and officers' run-off insurance policy in respect of the directors and officers of any member of the Xplore Group that applies for no less than a 7 year period following the Implementation Date (**Run-off Policy**);
- (c) prior to the Effective Date, engage an independent consultant that HUB24 has approved prior to the date of this agreement, to run a tender process for the Run-off Policy seeking proposals from reputable insurers that have a rating that is the same as, or better than, the rating of the insurers for the directors' and officers' insurance policy in place for the current financial year to provide the Run-off Policy on the following basis:
 - (i) the same amount of coverage;
 - (ii) the same deductible or excess; and
 - (iii) otherwise on terms that are no less favourable to the current directors or officers of Xplore for the current financial year but which for the avoidance of doubt may be at a higher premium than the current directors' and officers' insurance policy;
- (d) keep HUB24 reasonably informed of all material developments in the tender process and provide a copy of the proposals received under the tender process; and
- (e) prior to the Implementation Date enter into the Run-off Policy which is the lowest cost (inclusive of the costs of brokerage, stamp duty and any other transaction costs in relation thereto) of the proposals received under the tender process in clause 11.4(c), provided such policy satisfies the requirements in clauses 11.4(c)(i) to 11.4(c)(iii)), and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date.

11.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Xplore must not:

- (a) vary or cancel the Policy or the Run-Off Policy; or
- (b) unless required under the Policy or the Run-Off Policy, commit any act or omission that may prejudice any claim by a director or officer of Xplore under the Policy or the Run-Off Policy.

12. Confidentiality and announcements

12.1 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this agreement will prevail over the Confidentiality Deed to the extent of any inconsistency.

12.2 Announcements

- (a) Immediately after the execution of this agreement each party must issue their respective Announcements to the ASX.
- (b) Subject to clause 12.2(c), any further public announcements by either of the parties in relation to, or in connection with, the Share Scheme or the Option Scheme may only be made in a form approved by the other party in writing (acting reasonably).
- (c) Where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with the Proposed Transaction or any other transaction related to this agreement or the Share Scheme or the Option Scheme, it may do so to the extent legally required and only then after it has given the other party as much notice as possible and has consulted in good faith to the fullest extent possible in the circumstances with the other party.

12.3 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 12.2 applies to any such statements or disclosures.

13. Termination

13.1 Termination by notice

- (a) HUB24 or Xplore may, by notice in writing to the other, terminate this agreement at any time prior to the Second Court Date:
 - (i) if the other is in material breach of any of its material obligations under this agreement (other than the breaching of a party's respective representations and warranties which are regulated by clause 13.2) and the other party has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
 - (ii) in accordance with clause 3.9;
 - (iii) if the Court refuses to make any order directing Xplore to convene the Share Scheme Meeting, provided that both Xplore and HUB24 have met and consulted in good faith and agreed that they do not wish to proceed with the Share Scheme; or
 - (iv) if the Effective Date for the Share Scheme has not occurred on or before the End Date.
- (b) Xplore may, by notice in writing to HUB24, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then each of that number of Xplore Directors as constitutes a majority of the Xplore Board publicly recommend a Superior Proposal and do not, within 3 Business Days, reinstate their recommendation of the Proposed Transaction; and
- (c) HUB24 may, by notice in writing to Xplore, terminate this agreement:
 - (i) at any time prior to the Delivery Time on the Second Court Date if at any time before then any director of Xplore:
 - (A) fails to recommend the Share Scheme or the Option Scheme;

- (B) withdraws or adversely revises or adversely modifies his or her recommendation of the Share Scheme or the Option Scheme;
- (C) makes a public statement indicating that he or she recommends, endorses or supports a Competing Proposal,

other than as a result of the circumstances described in clause 6.2, which for the avoidance of doubt will not extend to any Xplore Director adversely revising or adversely modifying his or her recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Competing Proposal.

13.2 Termination for breach of representations and warranties

- (a) HUB24 may, by notice in writing to Xplore, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:
 - (i) Xplore is in material breach of an Xplore Warranty; or
 - (ii) Xplore is in breach of the Xplore Warranty in clause 10.4(b)(vii),
and Xplore has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from HUB24 setting out details of the relevant circumstance and requesting Xplore to remedy the breach.
- (b) Xplore may, by notice in writing to HUB24, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:
 - (i) HUB24 is in material breach of a HUB24 Warranty; or
 - (ii) HUB24 is in breach of the HUB24 Warranty in clause 10.1(b)(xv),
and HUB24 has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Xplore setting out details of the relevant circumstance and requesting HUB24 to remedy the breach.

13.3 Effect of termination

- (a) In the event of termination of this agreement under clause 3.9 (Conditions not capable of being fulfilled), 13.1 (Termination by notice) or 13.2 (Termination for breach of representations and warranties), this agreement will become void and have no effect, except that the provisions of clauses 10.8 (Survival of representations), 10.9 (Survival of indemnities), 13 (Termination), 14 (Xplore Break Fee), 15 (HUB24 Break Fee) and 19.3 to 19.16 (inclusive) survive termination.
- (b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

14. Xplore Break Fee

14.1 Background

- (a) Xplore and HUB24 acknowledge that, if they enter into this agreement and the Share Scheme is subsequently not implemented, HUB24 will incur significant costs including those described in clause 14.2.
- (b) In the circumstances referred to in clause 14.1(a), HUB24 has requested that provision be made for the payments outlined in clause 14.3, without which HUB24 would not have entered into this agreement.
- (c) The Xplore Board believes that the Share Scheme will provide benefit to Xplore and Xplore Shareholders and that it is appropriate for Xplore to agree to the payments referred to in this clause 14 in order to secure HUB24's participation in the Proposed Transaction.

14.2 Costs incurred by HUB24

- (a) The fee payable under clause 14.3 has been calculated to reimburse HUB24 for the following:
- (i) fees for legal and financial advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;
 - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction;
 - (v) costs associated with the financing arrangements in respect of the Proposed Transaction; and
 - (vi) any damage to the HUB24's reputation associated with a failed transaction and the implications of those damages if HUB24 seeks to execute alternative acquisitions in the future,
- in each case, incurred by HUB24 directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.
- (b) The parties acknowledge that:
- (i) the amount of fees, costs and losses referred to in this clause 14.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 14.3 is a genuine and reasonable pre-estimate of those fees, costs and losses (it being acknowledged by the parties that the costs would most likely be in excess of this amount).

14.3 Payment by Xplore to HUB24

- (a) Xplore agrees to pay to HUB24 \$600,000 (inclusive of GST) (**Xplore Break Fee**) in any of the following circumstances:
- (i) (**Competing Proposal Succeeds**) both of the following occur:
 - (A) a Competing Proposal is publicly announced during the period commencing on the date of this agreement and ending on the End Date; and
 - (B) within 12 months from the date of the public announcement of such Competing Proposal:
 - (I) the Competing Proposal is implemented or completed substantially in the terms described in the public announcement; or
 - (II) without limiting clause 14.3(a)(i)(B)(I), the proponent of that Competing Proposal acquires a Relevant Interest in, an economic interest in or voting power of at least 50% of Xplore Shares and the Competing Proposal is (or becomes) free of any defeating condition; or
 - (ii) (**Competing Proposal executed**) at any time before termination of this agreement, Xplore enters into any agreement with a third party in respect of a Competing Proposal under which that third party and Xplore agree to undertake or give effect to such Competing Proposal;
 - (iii) (**Change of Recommendation**) at any time prior to the Second Court Date, any director of Xplore:
 - (A) withdraws or adversely modifies their recommendation of the Proposed Transaction or recommends or supports a Competing Proposal;

- (B) does not recommend in the Explanatory Booklet that Xplore Shareholders approve the Share Scheme or Xplore Optionholders approve the Option Scheme; or
- (C) makes any public statement to the effect that the Share Scheme or the Option Scheme is not, or is no longer, recommended,

except where this is:

- (D) as a result of the circumstances set out in the clause 6.2, which for the avoidance of doubt will not extend to any Xplore Director adversely revising or adversely modifying his or her recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Competing Proposal;
 - (E) as a result of the Independent Expert (either in its initial report or any updated, revised or supplemental report) opining that the Share Scheme is not in the best interest of Xplore Shareholders other than where the reason for that opinion is a Superior Proposal);
 - (F) in circumstances where Xplore is entitled to terminate this agreement under clause 13.1(a) or 13.2(b).
- (iv) **(Material Breach)** HUB24 terminates this agreement in accordance with (and subject to the cure periods specified in) clause 13.1(a)(i) or 13.2(a).
- (b) Xplore must pay HUB24 the Xplore Break Fee within 10 Business Days of receipt by Xplore of a demand for payment from HUB24 made after the occurrence of the event referred to in clause 14.3(a).
 - (c) The Xplore Break Fee is not payable merely because the resolution submitted to the Share Scheme Meeting in respect of the Share Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
 - (d) The Xplore Break Fee is only payable once and the maximum amount payable by Xplore under this clause 14.3 is \$600,000 (inclusive of GST).
 - (e) Where the Xplore Break Fee becomes payable to HUB24 under this clause 14.3 and is actually paid to HUB24, HUB24 (for itself and as agent of every member of the HUB24 Group):
 - (i) releases all rights against and agrees with Xplore that HUB24 will not make a Claim against any Xplore Party (other than a claim under this clause 14.3) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the Xplore Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the Xplore Break Fee or that constitutes or may constitute a breach of this agreement (without limitation); and
 - (ii) indemnifies any Xplore Party against a Claim that is made contrary to the release under clause 14.3(e)(i),
with the effect that the payment of the Xplore Break Fee represents the sole and exclusive remedy of any HUB24 Group Member in relation to this agreement.
 - (f) Clause 14.3(e) above does not apply to the extent of any right of HUB24 to make a Claim against any Xplore Party for any wilful, reckless or deliberate breach by Xplore of its obligations under clause 16.
 - (g) The Xplore Break Fee is not payable where:
 - (i) Xplore has become entitled to the HUB24 Break Fee; or
 - (ii) the Share Scheme becomes Effective.

15. HUB24 Break Fee

- (a) HUB24 agrees to pay to Xplore \$600,000 (inclusive of GST) (**HUB24 Break Fee**) if:
- (i) Xplore terminates this agreement in accordance with clause 13.1(a)(i); or
 - (ii) the Share Scheme and the Option Scheme each became Effective but
 - (A) HUB24 does not pay the Share Scheme Consideration in accordance with the terms and conditions of this agreement and the Share Scheme Deed Poll; or
 - (B) HUB24 does not pay the Option Scheme Consideration in accordance with the terms and conditions of this agreement and the Option Scheme Deed Poll.
- (b) HUB24 must pay Xplore the HUB24 Break Fee within 10 Business Days of receipt by HUB24 of a demand for payment from Xplore made after the occurrence of the event referred to in clause 15(a).
- (c) The maximum aggregate amount which HUB24 is required to pay in relation to a breach of this agreement by HUB24 is the HUB24 Break Fee, and in no event will the aggregate liability of HUB24 under or in connection with a breach of this agreement exceed the HUB24 Break Fee.
- (d) The HUB24 Break Fee is only payable once and the maximum amount payable by HUB24 under clause 15(a) is \$600,000 (inclusive of GST).

16. Exclusivity

16.1 No existing discussions

Other than in relation to the discussions with HUB24 in connection with the Proposed Transaction, Xplore represents and warrants to HUB24 that, as at the date of this agreement:

- (a) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal; and
- (b) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

16.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of HUB24, Xplore must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly

- (a) solicit, invite, encourage, continue or initiate any Competing Proposal or any enquiries, negotiations or discussions with any third party in relation to, or that may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal or which may otherwise lead to the Proposed Transaction not being completed; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal,

or communicate any intention to do any of those things.

16.3 No talk restriction

Subject to clause 16.5, during the Exclusivity Period, Xplore must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, (whether directly or indirectly):

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or

- (b) communicate any intention to do any of these things, in relation to, or that may reasonably be expected to encourage or lead to, an actual or potential Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to encourage or lead to a Competing Proposal or which may otherwise lead to the Proposed Transaction not being completed, even if:
- (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Xplore or any of its Related Bodies Corporate; or
- (d) that person has publicly announced the Competing Proposal.

16.4 No due diligence

- (a) During the Exclusivity Period, except with the prior written consent of HUB24, Xplore must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:
- (i) solicit, invite, initiate, or encourage, or (subject to clause 16.5) facilitate or permit, any person (other than HUB24) to undertake due diligence investigations in respect of Xplore, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (ii) subject to clause 16.5, make available to any person (other than HUB24) or permit any such person to receive any non-public information relating to Xplore, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) If Xplore proposes that any non-public information be provided to a third party, then:
- (i) before Xplore provides such information, the third party must enter into a confidentiality agreement which contains obligations on the recipient of that information which are no less onerous in any material respect than the obligations of HUB24 and Xplore under the Confidentiality Deed; and
- (ii) any non-public information provided to that third party must also provide to HUB24 (unless the information has already been provided to HUB24 or its Authorised Person).

16.5 Exceptions

Clauses 16.3 and 16.4(a) do not apply to the extent that they restrict Xplore or the Xplore Board from taking or refusing to take any action with respect to a genuine Competing Proposal (in relation to which there has been no contravention of this clause 16) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the Xplore Board considers is of sufficient commercial standing;
- (b) the Xplore Board, acting in good faith, determines:
- (i) where there is a written Competing Proposal, after consultation with its financial advisers, that the Competing Proposal is a Superior Proposal or the steps which the Xplore Board proposes to take may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and
- (ii) after receiving written legal advice from Xplore's external legal advisers experienced in transactions of this nature, that failing to respond to the Competing Proposal may constitute a breach of its fiduciary or statutory duties; and
- (c) Xplore notifies promptly and in any event within 48 hours HUB24 of each action or inaction by Xplore or the Xplore Board in reliance on this clause 16.5.

16.6 Xplore warranty and undertakings

- (a) Xplore warrants as at the date of this agreement:

- For personal use only
- (i) that it has, and its Authorised Persons have, ceased any existing discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
 - (ii) that it has requested, or will as soon as practicable request, the return of Xplore's confidential information in accordance with the terms of any relevant confidentiality agreement from all third parties conducting due diligence investigations on the Xplore Group prior to the date of this agreement in connection with (or contemplation of) a Competing Proposal or potential Competing Proposal.
- (b) During the Exclusivity Period, Xplore must:
- (i) enforce all its rights under each confidentiality agreement entered into in connection with an actual or potential Competing Proposal (before the date of this agreement), including any standstill obligations and its rights to require the return of confidential information as referred to in clause 16.6(a)(ii);
 - (ii) as soon as reasonably practicable, ensure that the electronic data room access granted to any third party prior to the date of this agreement in connection with an actual or potential Competing Proposal is withdrawn; and
 - (iii) not grant any waivers or agree to any amendments under any confidentiality agreements entered into in connection with an actual or potential Competing Proposal (before the date of this agreement).

16.7 Notice of Competing Proposal

- (a) During the Exclusivity Period, Xplore must promptly notify HUB24 in writing of:
- (i) any approach, inquiry or proposal made by any person to Xplore, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
 - (ii) any request made by any person to Xplore, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to Xplore, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Competing Proposal,
- (Competing Proposal Notice).**
- (b) A Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):
- (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 16.7(a)(i) or who made the relevant request for information referred to in clause 16.7(a)(ii); and
 - (ii) the material terms and conditions (including price, conditions precedent, timetable and any break fee) of any Competing Proposal or any proposed Competing Proposal (to the extent known),
- and HUB24 agrees that any such information received will constitute "Confidential Information" as defined in the Confidentiality Deed.
- (c) During the Exclusivity Period, Xplore must also notify HUB24 in writing as soon as possible after becoming aware of any material developments in relation to any actual, proposed or potential Competing Proposal, including in respect of any of the information previously notified to HUB24 under this clause 16.7.
- (d) For the purposes of this clause 16.7, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

16.8 Xplore's response to Competing Proposal and HUB24's right to respond

- (a) If Xplore receives a Competing Proposal and as a result, any Xplore Director proposes to either:
- (i) change, withdraw or modify his or her recommendation of the Share Scheme; or
 - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal with the person who has made the applicable Competing Proposal (**Rival Acquirer**) (other than an Acceptable Confidentiality Deed),
- Xplore must direct each Xplore Director not to do so:
- (iii) unless the Competing Proposal is bona fide; and
 - (iv) until each of the following has occurred:
 - (A) Xplore has given HUB24 written notice (**Relevant Notice**) of the Xplore Director's proposal to take the action referred to in clauses 16.8(a)(i) or 16.8(a)(ii) (subject to HUB24's rights under clause 16.8(b)), including details of the grounds on which the Xplore Directors propose to take such action;
 - (B) Xplore has given HUB24 all information that would be required by clause 16.7(b), including the identity of the person making the Competing Proposal; and
 - (C) either:
 - (I) HUB24 has not announced or provided to Xplore a Counter Proposal before the Cut Off Date; or
 - (II) HUB24 has announced or provided to Xplore a Counter Proposal before the Cut Off Date and the Xplore Board has determined, in good faith, that the Counter Proposal would not provide an equivalent or superior outcome to Xplore shareholders as a whole compared with the Competing Proposal and HUB24 have been given an opportunity to amend the Counter Proposal in accordance with clause 16.8(e).
- (b) If Xplore gives a Relevant Notice to HUB24 under clause 16.8(a)(iv)(A), HUB24 will have the right, but not the obligation, at any time during the 5 Business Days following the receipt of the Relevant Notice (**Cut Off Date**), to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (each a **Counter Proposal**), and if it does so then the Xplore Directors must review the Counter Proposal and determine whether, in good faith, the Counter Proposal would provide an equivalent or superior outcome to Xplore shareholders as a whole compared with the Competing Proposal.
- (c) Xplore must procure that the Xplore Board promptly, and in any event within 2 Business Days, notifies HUB24 of the determination in writing, stating reasons for that determination.
- (d) If the Xplore Directors determine in good faith that the Counter Proposal would provide an equivalent or superior outcome to Xplore Shareholders as a whole compared with the Competing Proposal, then Xplore and HUB24 must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counter Proposal, and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Xplore must use its best endeavours to procure that the Xplore Directors recommend the Counter Proposal to the Shareholders and not recommend the applicable Competing Proposal.
- (e) If the determination is that the Counter Proposal would not provide an equivalent or superior outcome to Xplore Shareholders as a whole compared with the Competing Proposal, then HUB24 may take steps to amend the Counter Proposal to address the reasons given within a further period of 4 Business Days. If HUB24 does so to Xplore's satisfaction, then the process in clause 16.8(d) applies to that amended Counter Proposal.

- (f) For the purposes of this clause 16.8, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

16.9 Normal provision of information

Nothing in this clause 16 prevents Xplore from;

- (a) providing any information required to be provided by any applicable law (including to satisfy its obligations under the Listing Rules), any Government Agency, or any court of competent jurisdiction;
- (b) providing any information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business; and
- (c) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers, in the ordinary course of business in accordance with its usual practices.

17. Modification of Xplore Break Fee, HUB24 Break Fee or exclusivity arrangements

17.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clauses 14 or 15 or an exclusivity arrangement under clause 16 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Xplore Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 16, it will make a declaration of unacceptable circumstances,

then, subject to clause 17.2:

- (c) the parties must amend clauses 14, 15 and/or 16 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 17.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clauses 17.1(a) or 17.1(b) nor the amendment of clauses 14, 15 and/or 16 will be taken to be a breach of, or permit any party to terminate, this agreement.

17.2 No requirement to act unless decision final

The parties are only required to take steps under 17.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) HUB24 and Xplore agree in writing not to appeal or seek review of the decision to impose that requirement.

17.3 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clause 17.1(a) or 17.1(b). If either HUB24 and Xplore wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review made by the first party.

17.4 Determination by Governmental Agency

If a Governmental Agency determines that payment of all or any part of the Xplore Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Xplore Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of Xplore to pay the Xplore Break Fee does not apply to the extent of the Impugned Amount; and
- (b) if HUB24 has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

18. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be sent to the address for service of the addressee specified in the Details;
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent to the email address, of the addressee, in accordance with the Details; and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) **(in the case of email)** immediately after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

19. General

19.1 Further acts

Each party will promptly do and perform 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 any other party to give effect to this agreement.

19.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties.

19.3 Payments

Unless otherwise provided in this agreement, where an amount is required to be paid to a party (**Receiving Party**) by another party under this agreement, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and

- (b) without deduction, withholding or set-off.

19.4 Interest

- (a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 19.4(a):
- (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

19.5 GST

- (a) Any reference in this clause 19.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for the application of this clause 19.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 19.5(c) does not apply to any taxable supply under or in connection with this agreement that is stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 19.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

19.6 Stamp duty

HUB24 must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this agreement or the Share Scheme or the Option Scheme or the steps to be taken under this agreement or the Share Scheme or the Option Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Share Scheme and the cancellation of Scheme Options under the Option Scheme).

19.7 Expenses

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement and the Explanatory Booklet and the proposed, attempted or actual implementation of this agreement and the Share Scheme and the Option Scheme.

19.8 Amendments

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

19.9 Assignment

- (a) Subject to clause 19.9(b) below, a party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.
- (b) HUB24 may assign, grant a security interest over, novate or otherwise transfer by way of security, any of its rights or obligations under this deed to a financier or financiers (or a security agent or security trustee thereof) without the prior written consent of Xplore solely for the purpose of obtaining finance or providing security in connection with the Share Scheme and the Option Scheme.

19.10 Business Day

Except where otherwise expressly provided, where under this agreement the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the next Business Day.

19.11 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.
- (d) Nothing in this agreement obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.

19.12 Counterparts and electronic execution

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This agreement is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 18, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.
- (d) A party may sign electronically a soft copy of this agreement through DocuSign or other electronic means and bind itself accordingly. That will satisfy any statutory or other requirements for it to be in writing and signed by that party. Any soft copy so signed will constitute an executed original counterpart. In addition, it is intended to print it out when so signed, so that the relevant signatures will appear in the printout, and any printout will also be an executed original counterpart.

19.13 Entire agreement

- (a) This agreement:
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 19.13(a), the Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this agreement prevails.

19.14 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement set out in this agreement.

19.15 No merger

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

19.16 Governing law

- (a) This agreement is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

Schedule 1 - Indicative timetable

[Not reproduced here. Refer ASX announcement dated 28 October 2020 for indicative timing. Await Explanatory Booklet for updated indicative timing]

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Schedule 2 – Share Scheme

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Schedule 3 – Share Scheme Deed Poll

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Schedule 4 - Option Share Scheme

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Schedule 5 - Option Scheme Deed Poll

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Signing page

EXECUTED as an agreement.

Executed by Xplore Wealth Limited in accordance with Section 127 of the *Corporations Act 2001*

DocuSigned by:
Donald Sharp
C28684C7CAC84B5...
Signature of director

Donald Sharp
Name of director (print)

DocuSigned by:
Alex Hutchison
381DFA321CAE469...
Signature of director/company secretary
(Please delete as applicable)

Alex Hutchison
Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by HUB24 Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

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Signing page

EXECUTED as an agreement.

Executed by Xplore Wealth Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)


Name of director/company secretary (print)

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Executed by HUB24 Limited in accordance with Section 127 of the *Corporations Act 2001*



Signature of director



Signature of _____/company secretary
(Please delete as applicable)

Andrew Alcock

Name of director (print)

Kitrina Shanahan

Name of director/company secretary (print)

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