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# ASX Announcement

**18 September 2013**

**Joint ASX / Media Release**

## **Geodynamics Takeover Offer for KUTh Energy Ltd**

### **Key Points**

- Geodynamics Limited (**Geodynamics**) intends to make a conditional off market takeover offer to acquire 100% of KUTh Energy Limited (**KUTh**).
- KUTh shareholders will be offered one (1) Geodynamics share for every five and a half (5.5) KUTh shares, valuing KUTh at 2.0 cents per share based on the 30-day VWAP (volume weighted average price) of Geodynamics' shares – a 31.6% premium to the corresponding 30-day VWAP of KUTh shares.
- KUTh shareholders will hold 6.12% of the enlarged Geodynamics Group.
- KUTh's Board will unanimously recommend that KUTh shareholders accept the offer, in the absence of a superior proposal (with the exception of one director, who will not be involved in the deliberations, discussed below).
- The Offer is supported by major shareholders of KUTh, with shareholders representing an aggregate 36.7% of KUTh's issued shares having advised Geodynamics that they intend to accept the Offer for all of the KUTh shares they own or control, in the absence of a superior proposal.
- The transaction will provide shareholders with access to an enlarged, more diverse portfolio of high quality geothermal projects in the Pacific Islands, realising substantial synergies between Geodynamics' Savo Island Geothermal Project in Solomon Islands and KUTh's Takara Geothermal Project in Vanuatu.
- Based on the 30-day VWAP of GDY shares as at 17 September 2013 and balance sheet information current as at 30 June 2013 the enlarged Geodynamics Group will have a pro-forma market capitalisation of about \$47.5 million and cash of approximately \$42.2 million.

## Intention to make a takeover bid

Geodynamics Limited (ASX: GDY) and KUTh Energy Limited (ASX: KEN) have entered into a binding Takeover Bid Implementation Agreement (**TBIA**) under which Geodynamics will make an off-market takeover bid (**Offer**) to acquire all of the issued ordinary shares in KUTh.

The Offer is **one (1) Geodynamics Share for every five and a half (5.5) KUTh Shares** (subject to rounding), representing a 31.6% premium based on the 30-day VWAPs (volume weighted average prices) of Geodynamics and KUTh shares as at 17 September 2013.

The offer price based on Geodynamics' closing price on the 17 September 2013 values KUTh at approximately \$2.65 million based on 145,845,600 ordinary shares on issue and will require Geodynamics to issue 26,517,390 shares to complete the proposed acquisition.

The KUTh Board of Directors will:

- recommend unanimously that shareholders accept the Offer by Geodynamics (with the exception of George Miltenyi, as discussed below).; and
- accept the offer in respect of each of their individual shareholdings,

provided in each case that there is no superior proposal.

On completion of the proposed transaction it is the intention of the Board of Geodynamics to invite Mr George Miltenyi, a Non-executive Director of KUTh, to join the Board of Geodynamics. As Mr Miltenyi intends to join the Board of Geodynamics, he will not provide a recommendation with regards to the proposal, but intends to accept the offer in respect of his shareholding in the absence of a superior offer.

## Rationale

KUTh Energy has a portfolio of geothermal energy projects and prospects focussed on growing markets in the Pacific Islands. This market is also a key focus of Geodynamics where it is actively pursuing the Savo Island Geothermal Power Project located in Solomon Islands. KUTh's primary project is the Takara Geothermal Project in Vanuatu, where it holds a Production Licence providing exclusive rights over a prospective geothermal area located on the north of the main island of Efate. Additionally KUTh has submitted applications for licenses in Papua New Guinea and Fiji. In all these locations there is growing electricity demand and the potential to replace current high cost diesel power supply with cheaper, cleaner and more reliable power through geothermal generation.

The proposed transaction will provide shareholders with access to an enlarged, more diverse portfolio of high quality geothermal projects in the Pacific Islands, realising substantial synergies between Geodynamics' Savo Island Geothermal Power Project in Solomon Islands and KUTH's Takara Geothermal Project in Vanuatu. It will enhance Geodynamics' position as a diversified Australian geothermal energy developer.

KUTH shareholders will have the opportunity to participate in the growth of a well-credentialed and well-funded Australian geothermal energy group, with the opportunity to realise value from an expanded asset base including Geodynamics' projects in Australia and Solomon Islands. The combination of the companies will ensure that the financial and technical capability is available to accelerate the development of the Takara Geothermal project in parallel with the development of the Savo Island Geothermal Power Project.

## **Transaction Outcome**

Following completion of the transaction the enlarged Geodynamics Group is expected to have a pro-forma market capitalisation of approximately \$47.5 million based on the 30-day VWAP of GDY shares at 17 September 2013 and a strong balance sheet with cash of approximately \$42.2 million (using cash balances as at 30 June 2013).

## **Managing Director and Chief Executive Officer of Geodynamics, Geoff Ward, said:**

"KUTH's portfolio contains attractive geothermal opportunities that are a strong strategic and commercial fit with Geodynamics' activities in the Solomon Islands. The combination of Geodynamics' and KUTH's portfolio provides shareholders access to a well balanced portfolio of opportunities offering near term revenue and potential for longer term growth within an overall stronger company that is well financed to achieve the development of these projects. The combination of the two groups will allow equipment, knowledge and capability to be shared effectively across the portfolio providing significant benefits through combined drilling campaigns, shared technical resources and cost efficiencies."

## **Chairman of KUTH, Bruce McKay, said:**

"Bringing the two companies together offers strong synergies and value for our shareholders who will continue to benefit from the development of our geothermal energy projects while gaining access to Geodynamics' financial and technical capability required to progress the Takara Project."

## **Further Transaction Details**

The Offer will be implemented by way of an off-market takeover offer under the Australian Corporations Act. The consideration will be one (1) Geodynamics share for every five and a half (5.5) KUTH shares on issue (subject to rounding). The Offer extends to KUTH shares only.

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Following implementation of the Offer KUTH is expected to become a wholly-owned subsidiary of Geodynamics, with current KUTH shareholders holding approximately 6.12% of the enlarged Geodynamics Group.

Geodynamics will invite a current KUTH director, Mr George Miltenyi, to join the Geodynamics' Board, which will continue to be chaired by Keith Spence with Geoff Ward remaining as Managing Director and Chief Executive Officer. The remaining KUTH directors will step down from the KUTH Board on completion of the Offer.

## **Selected Conditions of the Takeover Bid Implementation Agreement**

The Offer is subject to a number of conditions which are disclosed in full in the Takeover Bid Implementation Agreement (**TBIA**) attached to this announcement. Conditions include but are not limited to:

- minimum acceptance condition of 90% relevant interest in KUTH shares;
- no superior proposal;
- no material acquisitions or disposals by KUTH; and
- no material change to KUTH or Geodynamics.

A break fee of \$50,000 in cash is payable by KUTH in the event (among other events) that the Offer is beaten by a countering offer, and payable by Geodynamics in the event that Geodynamics fails to proceed with the bid, except in certain circumstances.

Further details of the Offer are included in the TBIA between Geodynamics and KUTH attached to this announcement.

A Bidder's Statement and Target's Statement will be sent to KUTH shareholders in due course.

**- ENDS -**

For further information, please contact:

### **Geodynamics Limited**

Geoff Ward  
Tel: 07 3721 7500

### **KUTH Energy Limited**

David McDonald  
Tel: 02 9238 6865

### **About Geodynamics**

Geodynamics is the leading Australian geothermal exploration and development company. Geodynamics possesses some of the best geothermal resources in the world and is rapidly developing technology to exploit the resource.

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Geothermal energy has the potential to be a critical element of Australia's and the Pacific's future power generation and Geodynamics is at the forefront of development.

## **About KUTh**

KUTh Energy is an early stage geothermal development company. Its focus is the identification, exploration and commercialisation of geothermal heat resources that will provide an acceptable return to shareholders and deliver a long term sustainable benefit to the environment and the end consumer. The company was incorporated in May 2007 and listed on the Australian Securities Exchange (ASX) in September 2007. The company's initial focus was the development of "Hot Rock" geothermal prospects in Australia in order to develop a renewable energy base-load alternative to current fossil fuel electricity generation. The company has since diversified its project platform to include more conventional "volcanic hosted" geothermal prospects. The first target area has been Pacific countries where surface expressions of hot fluid and steam offer the potential for lower cost exploration and development.

## Takeover Bid Implementation Agreement

between

**Geodynamics Limited**  
ABN 55 095 006 090  
(GDY)

and

**KUTh Energy Limited**  
ABN 33 125 694 920  
(KEN)

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This agreement is made on

18<sup>th</sup>

September 2013

between **Geodynamics Limited** (ACN 095 006 090) having its address at Level 3, 19 Lang Parade, PO Box 2046, Milton Queensland 4064 (**GDY**).

and **KUTh Energy Limited** (ABN 33 125 694 920) having its address at Level 57, MLC Centre, 19-29 Martin Place, Sydney New South Wales 2000 (**KEN**).

## Recitals

- A. GDY proposes to make an off-market takeover offer, in accordance with Chapter 6 of the Corporations Act, to acquire all of the shares of KEN, subject to the Directors of KEN recommending that KEN shareholders accept GDY's Takeover Offer bid in the absence of a Superior Proposal.
- B. It is a pre-requisite to GDY making the Takeover Bid, and to the Directors of KEN recommending that KEN shareholders accept GDY's Takeover Offer bid in the absence of a Superior Proposal, that the parties enter into this Agreement.

Now it is agreed as follows:

## 1 Definitions and interpretation

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### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

**Agreed Announcement** means the announcement agreed between the parties in the form initialled by the parties on or about the date of this Agreement.

**Announcement Date** means the date on which the Agreed Announcement is made.

**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 includes a reference to this Agreement.

**ASX** means ASX Limited or the securities market operated by ASX Limited, as the case requires.

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

**Bidder's Statement** means a bidder's statement within the meaning given in section 9 of the Corporations Act.

**Board** means board of directors.

**Business Day** means a day on which the banks are open for business in Brisbane excluding a Saturday, Sunday or public holiday.

**Competing Proposal** means any proposal or transaction which, if completed, would mean a person (other than GDY or any associate of GDY) would:

- (a) directly or indirectly acquire a legal or beneficial interest in, or control of, 20% or more of KEN's share capital or of the share capital of any of its subsidiaries;
- (b) acquire control of KEN, within the meaning of section 50AA of the Corporations Act, or a material part of KEN's business or assets; or
- (c) otherwise acquire or merge (including by a reverse takeover bid or dual listed KEN structure) with KEN.

**Conditions Notice Date** means the conditions notice date under the Takeover Bid.

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

**Government Agency** means any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**Information** includes estimates, forecasts, opinions, projections and other statements.

**KEN Directors** means the directors of KEN, except those appointed in accordance with clause 5.5.

**Material Adverse Event** means any change, event, effect, occurrence or state of facts that is, or would reasonably be expected to be, material and adverse to the assets, liabilities (including contingent liabilities that may arise through outstanding, pending or threatened litigation or otherwise), business, operations, financial condition or prospects of GDY and any of its subsidiaries taken as a whole.

**Offer** means each offer to acquire Shares made in connection with the Takeover Bid.

**Offer Period** means the period that the Offer is open for acceptance.

**Offer Terms** means the terms and conditions in the schedule to this Agreement.

**Option** means an option to acquire by way of issue a Share.

**Proposed Announcement Date** means no later than 9:00 am on the Business Day immediately following the date of execution of this Agreement.

**Proposed Offer Price** means the price specified in item 1 of the Offer Terms.

**Share** means an ordinary share in the capital of KEN, including all shares on issue as at the end of the Offer Period.

**Shareholder** means a holder of Shares.

**Superior Proposal** means a Competing Proposal which the directors of KEN reasonably determine, based on external expert financial advice, provides greater value to the KEN Shareholders than the Offer Terms.

**Takeover Bid** means an off-market bid within the meaning of the *Corporations Act* for all of the issued Shares.

**Takeover Offer** means the offer under the Takeover Bid, the consideration for which is the Proposed Offer Price, and that satisfies the requirements of clause 4.1.

**Target's Statement** means a target's statement within the meaning given in section 9 of the Corporations Act.

**Unacceptable Circumstances** has the meaning as set out in section 657A of the Corporations Act.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;

- (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Agreement and references to this Agreement include any recital, schedule or annexure;
  - (iv) any contract (including this Agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
  - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
  - (x) time is a reference to legal time in Brisbane;
  - (xi) a reference to a day or a month means a calendar day or calendar month;
  - (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no party enters into this Agreement as agent for any other person (or otherwise on their behalf or for their benefit);
  - (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
  - (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
  - (e) headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
  - (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
  - (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
  - (i) where there are two or more persons in a party each are bound jointly and severally; and
  - (j) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

## **2 Exclusivity**

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### **2.1 Prohibition**

From the date of this Agreement until the end of the Offer Period KEN must not, and must ensure that each of its related bodies corporate, officers, employees, agents, consultants, investment banks, lawyers or other advisers (each a **Relevant Person**) does not, directly or indirectly:

- (a) solicit or initiate (including without limitation by the provision of non-public information) any inquiries, expression of interest, offer, proposal or discussions by any person to make a Competing Proposal (whether from a person with whom KEN has previously been in discussions or not);
- (b) participate in any negotiations or discussions or provide any information to any person with respect to any inquiry, expression of interest, offer or proposal by any person to make a Competing Proposal;
- (c) accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding regarding a Competing Proposal; or
- (d) disclose any non-public information about the business or affairs of KEN to a third party (other than a Government Agency) with a view to obtaining, or which may reasonably be expected to lead to receipt of, a Competing Proposal.

### **2.2 Fiduciary exception**

Clauses 2.1(b), (c) and (d) and 2.4 do not prohibit any action or inaction by KEN or any Relevant Person if compliance with the relevant clause would, in the opinion of the directors of KEN reasonably formed in good faith for a proper purpose, constitute a breach of any of the statutory or fiduciary duties of the directors of KEN (in reliance on specific written legal advice confirming this opinion) on the basis that the Competing Proposal is a Superior Proposal provided that the approach by the third party was not facilitated by or as a result of a breach of clause 2.1(a).

### **2.3 KEN's response to a Competing Proposal**

Notwithstanding clause 2.1, KEN is entitled to respond, in the manner set out in clause 2.1(b) or clause 2.1(d), to a bona fide unsolicited written offer or proposal relating to a Competing Proposal made after the date of this Agreement to KEN where, on the basis of written legal advice from KEN's legal advisors, a failure to respond would constitute a breach of the statutory or fiduciary duties of the directors of KEN.

### **2.4 Notification**

Until the end of the Offer Period KEN must immediately notify GDY of any approach or attempt to initiate discussions or negotiations regarding a Competing Proposal, such notification to include the detailed nature of the approach and the identity of the party making the approach.

## **3 Mutual exchange of information**

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### **3.1 Provision of information**

Each of GDY and KEN will:

- (a) give the other through its employees, agents, representatives, financial advisers, accountants and lawyers full and free access to all information required for the purpose of the preparation of GDY's Bidder's Statement or KEN's Target's Statement respectively; and

- (b) respond as soon as reasonably practicable (but in any event no later than 9.00am on the next Business Day after the notice of the query or request has been received) to any queries or requests for further information.

### 3.2 Bidder's Statement and Target's Statement

- (a) GDY will, to the extent practicable, give KEN a reasonable opportunity to review an advanced draft of GDY's Bidder's Statement, and will consult in good faith with KEN with respect to any comments KEN may have.
- (b) KEN will, to the extent practicable, give GDY a reasonable opportunity to review an advanced draft of the KEN's Target's Statement and will consult in good faith with GDY with respect to any comments GDY may have.

### 3.3 Confidentiality

Information disclosed for the purposes of this Agreement is subject to the obligations of confidentiality pursuant to the confidentiality agreement between the parties as amended by an exchange of emails on or about 26 August 2013, which agreement continues in full force and effect according to its terms.

### 3.4 GDY acknowledgement

The parties acknowledge that, notwithstanding any agreement to the contrary, as a result of entering into this Agreement, GDY will be able to disclose information in the Bidder's Statement to the extent such disclosure:

- (a) is required under Australian law; and
- (b) is necessary to enable GDY and its controlled entities to acquire Shares under the Offers or on-market subject to the restrictions in the Corporations Act without breaching the provisions of Division 3 of Part 7.10 of the Corporations Act.

### 3.5 KEN acknowledgement

The parties acknowledge that, notwithstanding any agreement to the contrary, as a result of entering into this Agreement, KEN will be able to disclose information in the Target's Statement to the extent disclosure:

- (a) is required under Australian law; and
- (b) is necessary to ensure that KEN is free to consider and recommend the Offers.

## 4 Takeover Offer

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### 4.1 Takeover Offer

GDY will:

- (a) no later than the Proposed Announcement Date or such later date as the parties may agree, publicly propose by way of announcement to ASX in the form of the Agreed Announcement to acquire all the issued shares of KEN pursuant to a Takeover Offer on terms and conditions no less favourable to KEN Shareholders than the Offer Terms;
- (b) as soon as reasonably practicable serve on KEN GDY's Bidder's Statement for the GDY's Takeover Offer which includes an offer on terms and conditions no less favourable to Shareholders than the Offer Terms;
- (c) use its reasonable endeavours, to the extent practicable, to co-ordinate despatch of GDY's Bidder's Statement to KEN Shareholders at the same time as the Target's

Statement is despatched but, if despite the exercise of reasonable endeavours, it is not practicable to do so, GDY will despatch GDY's Bidder's Statement by the earlier of:

- (i) 3 Business Days after KEN, upon the request of GDY and made in accordance with clause 5.1(a), provides consent to early despatch under item 6 of section 633(1) of the Corporations Act; or
  - (ii) 14 days after serving it on KEN,
- and
- (d) if the Takeover Bid succeeds, take all actions necessary to cause the appointment of George Miltenyi to the Board of GDY within 5 Business Days of the suspension of the Shares from trading on ASX.

#### 4.2 **GDY may use subsidiary**

- (a) Subject to clause 4.2(b), GDY may conduct the Takeover Bid by causing a subsidiary to conduct the Takeover Bid, in which case references to:
  - (i) the Takeover Bid are references to the Takeover Bid by that subsidiary; and
  - (ii) GDY making the Takeover Bid are references to GDY causing that subsidiary to make the Takeover Bid.
- (b) If clause 4.2(a) applies, GDY:
  - (i) will issue GDY shares as the Proposed Offer Price;
  - (ii) must procure that its relevant subsidiary performs GDY's obligations under this Agreement; and
  - (iii) guarantees to KEN the performance of those obligations by that subsidiary.

#### 4.3 **KEN's assessment of the Offer Terms**

KEN represents and warrants that:

- (a) the KEN Directors have met as a board and considered the possibility of GDY agreeing to make the Takeover Bid; and
- (b) all of the KEN Directors have informed KEN that, if GDY complies with clause 4.1(a), they will unanimously (with the exception of George Miltenyi, who will not make a recommendation) recommend that Shareholders accept the Offers subject only to a qualification that the recommendation is subject to:
  - (i) no Superior Proposal being made; and
  - (ii) no Material Adverse Event occurring; or
  - (iii) no Material Adverse Event having occurred prior to the date of this Agreement, where such Material Adverse Event was not disclosed in information provided by GDY to KEN or publicly disclosed by GDY, prior to the date of this Agreement.

#### 4.4 **KEN to recommend Takeover Offer**

KEN represents and warrants that, if GDY makes the Takeover Bid on terms no less favourable to the KEN Shareholders than the Offer Terms, KEN will:

- (a) release an announcement in the form of the Agreed Announcement at the same time as, or immediately following, GDY making the announcement under clause 4.1(a);

- (b) announce to ASX that the directors of KEN will:
  - (i) unanimously (with the exception of George Miltenyi, who will not make a recommendation) recommend that KEN Shareholders accept GDY's Takeover Offer; and
  - (ii) accept GDY's Takeover Offer in respect of any Shares in KEN that they own or control,

subject in each case to there being no Superior Proposal and no Material Adverse Event having occurred; and
- (c) use its reasonable endeavours to despatch the Target's Statement to KEN Shareholders at the same time as or as soon as reasonably practicable after despatch of the Bidder's Statement to Shareholders.

#### 4.5 **Fiduciary exception**

Nothing in clause 4.3 or clause 4.4 prevents KEN or the Board of KEN from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the KEN Board, constitute a breach of any of the statutory or fiduciary duties of the directors of KEN. The reasonable opinion of the KEN Board must be based on specific written legal advice.

## 5 **Facilitation of Offer**

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### 5.1 **Early despatch of Offers**

- (a) Subject to the requirements specified below, KEN agrees, upon the request of GDY, to provide KEN's consent to the Offers and accompanying documents to be sent by GDY under the Takeover Bid under Item 6 of section 633(1) of the Corporations Act being sent on a date nominated by GDY that is earlier than the date for sending under Item 6 of section 633(1) of the Corporations Act, provided that:
  - (i) any such request by GDY must be in writing and accompanied by preliminary drafts of the Offers and accompanying documents;
  - (ii) the Offers and accompanying documents (and any drafts of the same) must not contain any information which differs, or which was omitted, from the information provided by GDY to KEN, or publicly disclosed by GDY, prior to the date of this Agreement; and
  - (iii) the grant of such consent would not, in the reasonable opinion of the KEN Board, constitute a breach of any of the statutory or fiduciary duties of the directors of KEN.
- (b) KEN agrees to use its reasonable endeavours to ensure that its Target's Statement is despatched to Shareholders at the same time as GDY sends to Shareholders in connection with the Takeover Bid its Offers and accompanying documents.

### 5.2 **KEN to promote the Takeover Bid**

During the Offer Period, subject to there being no Superior Proposal or Material Adverse Event, KEN will:

- (a) use its best endeavours to procure that all of the KEN Directors maintain (including by statements in the Target's Statement) their recommendation that Shareholders accept an Offer under the Takeover Bid (with the exception of George Miltenyi, who will not make a recommendation); and

- (b) participate in efforts reasonably required by GDY to promote the merits of the Takeover Bid, including meeting with Shareholders, analysts, management, customers, press and other parties mutually agreed if requested to do so by GDY.

### 5.3 Bid conditions

- (a) KEN agrees, to the extent it is within KEN's control to prevent, not to do (or omit to do) anything which will, or is reasonably likely to, result in any of the conditions of the Takeover Bid being breached, or not being satisfied, or not being capable of being satisfied.
- (b) If any event occurs or becomes apparent which would cause any of the conditions of the Takeover Bid to be breached or prevent them from being able to be satisfied, KEN must, to the extent KEN is actually aware of such information, promptly notify GDY of the event.

### 5.4 Conduct of the business

From the date of this Agreement until the end of the Offer Period each party must and must procure that its subsidiaries:

- (a) conduct its business in the usual and ordinary course consistent with past practice or as may be required in order to satisfy a specific requirement of a Government Agency;
- (b) use its reasonable endeavours to preserve and maintain the value of its business and assets and the relationships with suppliers, customers and employees; and
- (c) not dispose of the whole or any part of its business for an amount in aggregate greater than \$50,000 in the case of KEN and its subsidiaries and \$100,000 in the case of GDY or its subsidiaries.

### 5.5 Appointment of directors

KEN must, after receiving written notice from GDY, take all actions necessary to cause the appointment of that number of nominees of GDY to the Board of KEN and to the boards of all of KEN's controlled entities which gives those nominees acting together control of the board and the controlled entity boards, within 5 Business Days of all of the following occurring:

- (a) GDY becoming entitled to be registered as the holder of not less than 50.1% of the Shares;
- (b) the Offers becoming unconditional; and
- (c) GDY having paid the consideration to all persons who have accepted the Offers as at the time the Offers become unconditional.

If GDY becomes entitled to be registered as the holder of not less than 90% of the Shares, the Offers have become unconditional and GDY has paid the consideration to all persons who have accepted the Offers as at the time the Offers become unconditional, KEN will provide reasonable assistance to any actions necessary to cause the resignation or removal of all those Directors who have not been nominated by GDY.

### 5.6 Fiduciary exception

Nothing in clause 5 prevents KEN or the Board of KEN from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the KEN Board, constitute a breach of any of the statutory or fiduciary duties of the directors of KEN. The reasonable opinion of the KEN Board must be based on specific written legal advice.



## **6 Takeover Offer – Variation and Waiver**

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### **6.1 Variation**

GDY may vary the terms and conditions of the Takeover Bid in any manner which is permitted by the Corporations Act, provided the varied terms and conditions are not less favourable to KEN Shareholders than the Offer Terms.

### **6.2 Waiver of conditions and extension**

- (a) Subject to the Corporations Act and clause 6.2(b), GDY may declare the Takeover Bid to be free from any condition or extend the Takeover Bid at any time before the end of the Offer Period.
- (b) GDY acknowledges and agrees that, if GDY extends the Takeover Bid such that the Offer Period lasts for a period which exceeds one calendar month, GDY forfeits any right, to which GDY might otherwise have become entitled under clause 8, to receive payment of a Break Fee (or any part of a Break Fee) from KEN.

## **7 Options**

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### **7.1 KEN must procure exercise or cancellation of Options**

KEN must procure:

- (a) the exercise, or subject to clause 7.2, an unconditional agreement on terms and conditions acceptable to GDY to exercise; or
- (b) the cancellation, or subject to clause 7.2, an unconditional agreement on terms and conditions acceptable to GDY to cancel, on the following terms:
  - (i) For all existing options with a strike price of \$0.10 or less: \$0.004 per Option.
  - (ii) For all existing options with a strike price of greater than \$0.10: Nil.
  - (iii) For options to be approved at the KEN annual general meeting in October 2013: \$0.0025 per Option,

all Options 7 days before the Conditions Notice Date.

### **7.2 Agreement to exercise or cancel Options**

An agreement to exercise or cancel the Options under clause 7.1:

- (a) may be conditional on all of the defeating conditions to the Takeover Bid being fulfilled or declared to be free of those defeating conditions by GDY; and
- (b) must contain a condition that the Options must be exercised or cancelled before the end of the Offer Period if all of the defeating conditions to the Share Offer are fulfilled or declared to be free of those defeating conditions by GDY.

### **7.3 Notification of exercise or cancellation**

KEN must:

- (a) inform GDY of the exercise or cancellation of any Options; and
- (b) give to GDY a copy of the any agreement to exercise or cancel any Options,

as soon as practicable but not later than two Business Days after the exercise or cancellation of any Options or the date of any agreement to exercise or cancel any Options.

## **8 Break Fee**

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### **8.1 Background**

- (a) GDY and KEN acknowledge that, if they enter into this Agreement and the Takeover Bid is subsequently not implemented, each will incur significant costs.
- (b) In these circumstances, each of GDY and KEN has requested that provision be made for the payments outlined in this clause 8, without which neither party would not have entered into this Agreement or otherwise acted to pursue the Takeover Bid.
- (c) Each of the GDY directors and the KEN directors believes that the Takeover Bid will provide significant benefits to GDY and KEN respectively and to their respective shareholders, and that it is appropriate to agree to the payments referred to in this clause 8 in order to secure GDY's consideration of the possibility of making the Takeover Bid.

### **8.2 Application and definition**

In this clause 8 **Break Fee** means the amount of \$50,000.

### **8.3 Payment of costs incurred by GDY**

Subject to clause 6.2(b), KEN must pay the Break Fee to GDY if:

- (a) KEN materially breaches clause 2.1 (noting the exceptions in clauses 2.2 and 2.3) or any other material provision of this Agreement;
- (b) any KEN director recommends, promotes or otherwise endorses a Competing Proposal or any other proposal or offer which recommendation, promotion or endorsement would otherwise materially prejudice the prospects of success of the Takeover Bid;
- (c) a person other than GDY or an associate of GDY, directly or indirectly acquires a legal or beneficial interest in, or control of, 50% or more of KEN's share capital or of the share capital of any of its subsidiaries or acquires an interest in all or a substantial part of the assets of KEN and its subsidiaries; or
- (d) at any time following GDY's announcement of the Takeover Bid, any KEN Director fails to recommend that Shareholders accept the Takeover Bid (with the exception of George Miltenyi, who will not make a recommendation) or, having made such a recommendation, makes a public statement which withdraws, revises, revokes or qualifies that recommendation (whether or not that failure, withdrawal, revocation, qualification or revision is otherwise in breach of this Agreement), except where the failure, withdrawal, revocation, qualification or revision is made as a result of a Material Adverse Event or a breach by GDY of a material provision of this Agreement.

### **8.4 Payment of costs incurred by KEN**

GDY must pay the Break Fee to KEN if:

- (a) GDY does not make a Takeover Offer for KEN for any reason other than any of the circumstances to which clause 8.3 applies; or
- (b) GDY breaches a material provision of this Agreement.

### **8.5 Payment**

- (a) GDY may demand payment of the Break Fee under clause 8.3 and KEN may demand payment of the Break Fee under clause 8.4, in each case in writing stating the circumstances which give rise to payment.

- (b) The Break Fee must be paid within 5 Business Days of receipt of a demand for payment from the party being entitled to the Break Fee under clause 8.3 or clause 8.4.

#### 8.6 Basis of Break Fee

The Break Fee has been calculated to reimburse each party for the following:

- (a) costs associated with the conduct of due diligence in respect of the Takeover Bid, including fees for legal and financial advice;
- (b) fees for legal and financial advice in respect of the Takeover Bid;
- (c) reasonable opportunity costs incurred in engaging in respect of the Takeover Bid or in not engaging in other alternative strategic initiatives;
- (d) costs of management and directors' time in respect of the Takeover Bid;
- (e) out of pocket expenses incurred by employees, advisers and agents in respect of the Takeover Bid;
- (f) any damage to reputation associated with a failed transaction and the implications of those damages if the party seeks to execute alternative transactions in the future; and
- (g) losses associated with any damage to goodwill with its customers, suppliers or employees,

in each case, incurred directly or indirectly as a result of pursuing the Takeover Bid.

#### 8.7 Quantification

The parties acknowledge and agree that:

- (a) the loss actually incurred by a party under clause 8.6 will be of such nature that it cannot accurately be ascertained;
- (b) the amount of the Break Fee is a genuine and reasonable pre-estimate of those fees, costs and losses; and
- (c) to the extent permitted by law, and except in the case of a material breach resulting in termination of this Agreement, the payment of the Break Fee by a party constitutes full and final satisfaction of any claim against that party that may arise under this Agreement, and the other party shall not be entitled to make any further claim.

#### 8.8 Compliance with law

If:

- (a) it is found by the Takeovers Panel or a Court that all or any part of the payment required to be made under clause 8.3 or clause 8.4 is unlawful, involves a breach of director's duties or constitutes Unacceptable Circumstances and the period for lodging an application for review or a notice of appeal (as applicable) has expired without such an application or notice having been lodged; or
- (b) an application for review or a notice of appeal having been lodged with the Takeovers Panel or a Court within the prescribed period, it is found by the relevant review panel or appeal Court that all or any part of the payment required to be made under clause 8.3 or clause 8.4 is unlawful, involves a breach of director's duties or constitutes Unacceptance Circumstances,

(in each case the **Challenged Amount**) then:

- (c) the undertaking under clause 8.3 or clause 8.4 respectively does not apply to the extent of the Challenged Amount; and

- (d) the party otherwise entitled to receive the Break Fee must immediately refund to the other party any Challenged Amount paid under this Agreement.

## **9 Warranties**

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Each party represents and warrants to the other that, at the date of this Agreement:

- (a) it is duly incorporated under the laws of the place of its incorporation;
- (b) it has the power and authority to sign this Agreement and perform and observe all its terms;
- (c) this Agreement has been duly executed and is a legal, valid and binding agreement, enforceable against it in accordance with its terms;
- (d) it is not bound by any contract which may restrict its right or ability to enter into or perform this Agreement;
- (e) no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it for its winding up or deregistration or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets, and no regulatory action of any nature has been taken, which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this Agreement; and
- (f) it is not aware of any act, omission, event or fact that would result in one or more of the offer conditions set out in the schedule being triggered, except as disclosed by the party to the other party in writing prior to the date of this Agreement.

## **10 Termination**

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### **10.1 Termination rights**

This agreement may be terminated by a party if:

- (a) the other party is in material breach of this Agreement and, to the extent that the breach is capable of remedy, that breach is not remedied by the other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate; or
  - (b) having made the Takeover Bid, GDY withdraws the Takeover Bid or the Takeover Bid lapses for any reason including non-satisfaction of a condition of the Takeover Bid; or
  - (c) a Material Adverse Event occurs,
- by immediate notice to the other party.

### **10.2 Effect of termination**

If this Agreement is terminated by a party under this clause 10:

- (a) each party will be released from its obligations under this Agreement except its obligations under clauses 3.3 (Confidentiality), 8 (Break Fee), 11 (GST) and 12.6 (Costs of agreement);
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this Agreement; and

- (c) in all other respects, all future obligations of the parties under this Agreement will immediately terminate and be of no further force or effect, including without limitation any further obligations in respect of GDY's Takeover Offer.

## **11 GST**

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### **11.1 Interpretation**

In this clause 11, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

### **11.2 GST gross up**

- (a) Subject to clause 11.2(b), if a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 11.2 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (b) Clause 11.2(a) does not apply to any consideration that is expressed in this Agreement to be inclusive of GST.

### **11.3 Reimbursements and indemnifications**

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 11.2.

### **11.4 Tax invoice**

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

## **12 Miscellaneous**

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### **12.1 Notices**

- (a) All notices, requests, consents and other documents authorised or required to be given by or pursuant to this Agreement must be given in writing and either personally served or sent by facsimile transmission (**fax**) addressed as follows:

#### **GDY**

To: Geodynamics Limited  
 Address: Level 3, 19 Lang Parade, PO Box 2046, Milton Queensland 4064  
 Fax: +61 7 3721 7599  
 Attention: Managing Director

#### **KEN**

To: KUTh Energy Limited  
 Address: Level 57, MLC Centre, 19-29 Martin Place, Sydney New South  
 Wales 2000  
 Fax: +61 2 9238 7633  
 Attention: Managing Director

- (b) Notices, requests, consents and other documents (**Notices**) must be deemed served or given:
- (i) if personally served by being left at the address of the party to whom the Notice is given during business hours, then in such case at the time the Notice is so delivered;
  - (ii) if sent by fax, then in such case when successfully transmitted during business hours, or if not during business hours, then when business hours next commence;
  - (iii) any party may change its address for receipt of Notices at any time by giving notice to the other party. Any Notice given under this Agreement may be signed on behalf of any party by the duly authorised director of that party and must be sent to all other parties to this Agreement.
- (c) If delivery or receipt of a notice under this clause is on a day which is not a Business Day or is after 4pm (addressee's time) it is regarded as received at 9am on the following Business Day.

#### 12.2 Waiver

- (a) The failure, delay or omission by a party to exercise any power or right conferred upon such party by this Agreement must not operate as a waiver of such power or right, nor must any single exercise of any such power or right preclude any other or future exercise of the power, or the exercise of any other power or right under this Agreement.
- (b) A waiver of any provision of this Agreement, or consent to any departure by a party from any provision of this Agreement, must be in writing and signed by all parties and is effective only to the extent for which it is given.
- (c) All remedies afforded to the parties under this Agreement are cumulative.

#### 12.3 Entire agreement

This agreement and documents referred to herein comprise the entire agreement between the parties and no earlier representation or agreement, whether oral or in writing, in relation to any matter dealt with in this Agreement must have any effect from the date of this Agreement.

#### 12.4 Counterparts

This agreement may be executed in any number of counterparts and all such counterparts when executed and taken together must constitute this Agreement.

#### 12.5 No merger

None of the terms or conditions of this Agreement, or any act, matter or thing done under or by virtue of this Agreement or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, operate as a merger of any of the rights and remedies of the parties under this Agreement, and those rights and remedies must at all times continue in force.

#### 12.6 **Costs of agreement**

Each party must bear its own legal costs in relation to the negotiation, preparation, execution and completion of this Agreement.

#### 12.7 **Amendments in writing**

No amendment to this Agreement has any force unless it is in writing and signed by both of the parties to this Agreement.

#### 12.8 **Governing law and jurisdiction**

This agreement must be governed by and construed in accordance with the laws for the time being in force in the State of Queensland, and the parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in respect of the State of Queensland.

#### 12.9 **Further assurances**

The parties agree that they will sign, execute and will do all such further documents as may be necessary to properly give effect to and for carrying out the intent of this Agreement.

#### 12.10 **Mutual conduct**

The parties agree that in all of their dealings with each other, and fulfilling their respective obligations under this Agreement, they will act reasonably and in good faith.

#### 12.11 **Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this Agreement or any power which is prohibited in any jurisdiction is, in that jurisdiction, in effective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or unenforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (c) Where a clause is void, illegal or unenforceable it may be severed without affecting the enforceability of the other provisions in this Agreement.

#### 12.12 **Assignment**

Neither party may assign or otherwise transfer any of its rights arising under this Agreement without the prior written consent of the other party.

#### 12.13 **Time is of the essence**

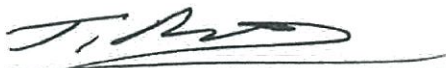
Time is of the essence in respect of this Agreement.

#### 12.14 **Attorneys**

Each of the attorneys executing this Agreement (if any) states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

**Executed as an agreement**

**Executed by Geodynamics Limited ACN 095 006 090 in accordance with section 127 of the Corporations Act 2001 (Cth):**



~~\*Director~~/\*Company Secretary

TIM PRITCHARD

Name of ~~\*Director~~/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate



Director

GEOFFREY WARD

Name of Director  
(BLOCK LETTERS)

**Executed by KUTH Energy Limited ACN 125 694 920 in accordance with section 127 of the Corporations Act 2001 (Cth):**



~~\*Director~~/\*Company Secretary

Justin Clyne.

Name of ~~\*Director~~/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate



Director

Mary O'Kane

Name of Director  
(BLOCK LETTERS)



## Schedule

### Indicative Offer Terms

#### 1 Offer Price

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One GDY share for every five and a half KEN Shares.

#### 2 Offer period

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One month after the date the Offer opens and subject to GDY's right to extend the period and its right to withdraw during that period under section 652B of the Corporations Act.

#### 3 Offer conditions

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The Offer is subject to the fulfilment of all of the following conditions any of which GDY may waive.

- (a) **(Minimum acceptance condition)** Before the end of the Offer Period, GDY and its associates have relevant interests in at least 90% (by number) of all Shares.
- (b) **(No Superior Proposal)** Before the end of the Offer Period, there is no Superior Proposal.
- (c) **(Regulatory Approval)** Before the end of the Offer Period, GDY has obtained any Regulatory Approval required in respect of its intended ownership of KEN and its operation of the business of KEN and, in each case, those Regulatory Approvals are granted, given, made or obtained on an unconditional basis and remain in full force and effect in all respects and do not become subject to any notice, intimation or indication to revoke, suspend, restrict, modify or not renew the same, and all appropriate waiting and other time periods (including any extensions of such waiting and other time periods) under applicable laws or regulations of any relevant jurisdiction have expired, lapsed or been terminated (as appropriate).
- (d) **(No restraint adversely affecting the Takeover Bid)** No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Takeover Bid or the transactions contemplated by the Takeover Bid is in effect at the close of the Offer Period.
- (e) **(Conduct of business)** Between the Announcement Date and the end of the Offer Period (each inclusive) KEN or any subsidiary of KEN have not done any of the following:
  - (i) **(licences and permits)** doing or omitting to do anything that causes or is reasonably likely to cause any licence or permit necessary or desirable for the conduct of its business to be suspended, revoked, cancelled or otherwise materially adversely impacted;
  - (ii) **(acquisition of assets)** acquiring (including by way of subscription for equity), offering to acquire, agreeing to acquire, leasing, or entering into a binding commitment, or granting a person an irrevocable option to require it, to acquire or lease any asset for a consideration of greater than \$100,000, or making an announcement in relation to such an acquisition, offer or agreement;
  - (iii) **(disposal of assets)** leasing, sub-leasing or disposing of, offering to lease or sub-lease or dispose of, agreeing to lease or sub-lease or dispose of or

granting a person an irrevocable option to require it to lease or sublease or dispose of any asset (including any shares held by KEN or a subsidiary of KEN) (or any interest in one or more assets) for a consideration of greater than \$100,000, or making an announcement in relation to such a lease, sublease, disposition, agreement or option, other than inventory in the ordinary course of business;

- (iv) **(financial indebtedness)** except for liabilities incurred in connection with the Takeover Bid, increasing its level of financial indebtedness (including financial liabilities incurred under finance leases), other than in the ordinary and usual course of business, by an amount in excess of \$100,000;
  - (v) **(capital expenditure)** making capital expenditure in excess of \$100,000 in aggregate;
  - (vi) **(joint venture or partnership)** entering into a joint venture, partnership or other similar arrangement;
  - (vii) **(dividend)** KEN declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
  - (viii) **(encumbrance)** creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property; or
  - (ix) **(prosecution or litigation)** is or becomes a party to any material prosecution, litigation or arbitration other than as a plaintiff or applicant, in respect of KEN or any of its subsidiaries or their respective business or assets that exposes KEN or the subsidiary to a potential liability exceeding \$100,000 (including legal costs) or having a material adverse effect on the business of KEN or any of its subsidiaries, not including litigation that is initiated or instigated by GDY or any of its subsidiaries.
- (f) **(Options)** 7 days before the Conditions Notice Date, the exercise or cancellation of the Options.
- (g) **(Change of control and other rights under certain agreements)** On or before the Announcement Date and before the end of the Offer Period (each inclusive), no person exercises or purports to exercise or states an intention to exercise, any rights under any provision of any agreement or other instrument to which KEN or any subsidiary of KEN is a party or by or to which KEN or any subsidiary of KEN or any of its assets may be bound or be subject, and no such rights become capable of being exercised, which results or could result to an extent which is material in the context of KEN and KEN's subsidiaries taken as a whole, in:
- (i) any other such agreement or other instrument being terminated or modified or becoming capable of being terminated or modified, or any action being taken or arising thereunder;
  - (ii) the interest or rights of KEN or any subsidiary of KEN in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified or becoming capable of being terminated or modified; or
  - (iii) the business or assets of KEN or any subsidiary of KEN with any other person being adversely affected; or
  - (iv) KEN or a subsidiary of KEN being required to dispose of or offer to dispose of, any material asset of the Group or acquire any asset,

as a result of the acquisition of Shares by GDY.

- (h) **(No Prescribed Occurrence)** Between the Announcement Date and the end of the Offer Period (each inclusive), no Prescribed Occurrence occurs without the prior written approval of GDY.
- (i) **(No Material Adverse Change)** Between the Announcement Date and the end of the Offer Period (each inclusive), no Material Adverse Change occurs.
- (j) **(Representations)** Between the Announcement Date and the end of the Offer Period (each inclusive), no circumstance or event occurs which would make any of the following statements, if those statements had been made on the Announcement Date, untrue or incorrect in any material respect:
  - (i) subject to the issue of any Shares on exercise of Options in accordance their terms, the issued share capital of KEN comprises 147,900,404 Shares, which includes new 2,054,804 new Shares the issue of which is subject to the approval of Shareholders at KEN's 2013 Annual General Meeting;
  - (ii) there are no securities of KEN convertible into Shares other than 14,300,000 Options, which includes 1,500,000 new Options the issue of which is subject to the approval of Shareholders at KEN's 2013 Annual General Meeting, each option entitling the holder to subscribe for one Share on the terms and conditions applicable to that option;
  - (iii) other than the Options referred to in paragraph (ii) above, there are no options or other entitlements over Shares or to have Shares issued; and
  - (iv) KEN is not involved in any negotiations with a party other than GDY relating to or concerning a Competing Proposal.
- (a) **(No material defect in filings)** Between the Announcement Date and the end of the Offer Period (each inclusive), GDY does not become aware that any document filed by or on behalf of KEN or by or on behalf of any other person in relation to KEN with the ASIC or ASX contains a statement which is incorrect or misleading in any material particular or form which from which there is a material omission.

#### 4 Definitions

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In this Schedule, unless the context otherwise requires:

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

**Executive Entitlements** means the unvested entitlements to Shares or Options issued in accordance with KEN's employee share and option plan.

**Insolvency Event** means for a person, being in liquidation or provisional liquidation or bankruptcy or provisional bankruptcy or under administration, having a controller, receiver, receiver and manager or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act (or its statutory equivalent in any other jurisdiction) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, becoming an insolvent under administration (as defined in section 9 of the Corporations Act (or its statutory equivalent in any other jurisdiction)), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or any analogous event, the making of an order by a court for the winding up of a person, or a person resolving that it be wound up.

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

**Material Adverse Change** means an event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters diminish, or could reasonably be

expected to diminish, the Net Assets of KEN as at 30 September 2013 by \$100,000 or more, other than:

- (a) an event, occurrence or matter required to be done or procured by KEN pursuant to this Agreement or the Takeover Bid;
- (b) any asset write off or write down required to be made by the accounting standards;
- (c) a change of law or accounting practice;
- (d) an actual event, occurrence or matter which is known to GDY or its Representatives prior to the Announcement Date (which does not include knowledge of the risk of an event, occurrence or matter happening);
- (e) an event, occurrence or matter that was apparent or reasonably ascertainable by GDY or its Representatives from:
  - (i) documents made available to them by KEN; or
  - (ii) responses provided to them in interviews with KEN management, in the course of the Due Diligence Investigations; or
- (f) an event, occurrence or matter that was apparent or reasonably ascertainable by GDY or its Representatives from:
  - (i) announcements made by KEN to ASX prior to the Announcement Date; or
  - (ii) information that was publicly available prior to the Announcement Date from databases maintained by ASIC or any other Government Agency.

**Net Assets** means the excess of total assets over total liabilities of KEN on a consolidated basis.

**Offer** means an offer to acquire Shares to be made by GDY pursuant to its Takeover Offer.

**Offer Period** means the period that the Offer is open for acceptance.

**Option** means an option to acquire by way of issue a Share.

**Prescribed Occurrence** means:

- (a) KEN converting all or any of its Shares into a larger or smaller number;
- (b) KEN or a subsidiary of KEN resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) KEN or a subsidiary of KEN:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) KEN or a subsidiary of KEN issuing shares, securities or other instruments convertible into shares, debt securities or granting an option over its shares, or agreeing to make such an issue or grant such an option other than:
  - (i) issuing Shares pursuant to the exercise of Options or Executive Entitlements in accordance their terms; or
  - (ii) issuing Shares or Options at the 2013 Annual General Meeting of KEN (subject to the approval of Shareholders), in accordance with an

announcement made to ASX prior to the date of the Implementation Agreement.

- (e) KEN or a subsidiary of KEN making any change or amendment to its constitution;
- (f) an Insolvency Event occurring in relation to KEN or a subsidiary of KEN;

**Representative** means in relation to an entity:

- (a) any of the entity's related entities; and
- (b) any of the officers and advisers of the entity or of any of its related entities.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisaton, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way after lodgement, filing, registration or notification:
  - (i) the expiry of any applicable period without intervention or action; or
  - (ii) the receipt of a statement in writing from the Government Agency that it does not intend to intervene or take action.