

Process Agreement

Ludowici Limited

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Reference

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Process Agreement

DATE 23 January 2012

PARTIES

FLSmith & Co. A/S
of Vigerslev Alle 77, DK-2500 Valby, Denmark (**FLS**)

Ludowici Limited
ACN 000 001 365 of 67 Randle Road, Pinkenba, Queensland 4008 Australia (**Ludowici**)

RECITALS

- A. FLS has submitted a proposal to Ludowici under which FLS would, subject to certain conditions, acquire 100% of Ludowici Shares. The Ludowici Board has unanimously decided and agreed to accept such proposal, subject to the circumstances set out in clause 2.2(c) and on the main terms and conditions set out in this document and have resolved that, in the absence of a superior Competing Proposal, pursuing the proposal is in the best interests of Ludowici Shareholders.
- B. Subject to the terms and conditions of this document, FLS and Ludowici have agreed to negotiate and finalise in good faith a Scheme Implementation Agreement for the Proposal, such agreement to contain (among other things) the key terms set out in clause 2.2 of this document and otherwise on terms and conditions that are customary in transactions of this kind.
- C. This document will form the basis for the parties' respective announcements to the markets about the proposal and provides the process for negotiating and entering into a definitive Scheme Implementation Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Adviser means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity to the market in general and who has been engaged or employed by that entity.

ASX means the Australian Securities Exchange.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Copenhagen and Brisbane.

Claim means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Competing Proposal means any proposal (including a scheme of arrangement) or offer that would if completed substantially in accordance with its terms result in any person or persons other than FLS or its Related Bodies Corporate acquiring (directly or indirectly):

- (a) an interest in all or a substantial part of the assets of Ludowici or the Ludowici Group;
- (b) a relevant interest in more than 20% of the issued Ludowici Shares, other than an acquisition in reliance on section 611, item 9 of the Corporations Act;
- (c) control of Ludowici within the meaning of section 50AA of the Corporations Act; or
- (d) otherwise acquiring or merging with Ludowici (including by way of reverse takeover, reverse scheme of arrangement or dual listed company structure).

Confidentiality Deed means the Confidentiality Deed between the parties dated 19 January 2012.

Corporations Act means the *Corporations Act 2001* (Cth) as modified by any relevant exemption or declaration by ASIC.

Due Diligence Information means the information to be provided by Ludowici in the online data room in response to the information requested by FLS, including in its initial Proposal (attached as Schedule 3).

Effective means 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 Scheme.

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

End Date has the meaning given in clause 8.

Family Shareholders means Julian Ludowici and Ludowici Investments Pty Limited.

Government 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 in any relevant part of the world. It includes the Australian Securities and Investments Commission, OMX and ASX (and any other relevant stock exchange).

Incurred Amount means the following actual third party costs incurred, paid or payable by FLS or any of its Representatives between 16 January 2012 and the End Date:

- (a) the reasonable costs of any external financial, accounting, consulting and legal advisers who hold a mandate or who have been engaged to advise or consult in relation to the Proposal; and
- (b) any reasonable out-of-pocket expenses incurred by FLS or any of its Related Bodies Corporate in connection with its due diligence investigations in relation to Ludowici.

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b) (i) the person resolving to appoint a controller or analogous person to the person or any of the person's property;

- (ii) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
- (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a security interest, or any agent on its behalf, appointing a controller or taking possession of any of the person's property;
- (d) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) an application being made to a court for an order for its winding up;
- (f) an order being made, or the person passing a resolution, for its winding up;
- (g) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent; or
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property, except if deriving out of the party's ordinary course of business; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by FLS.

LTIP Rights means the rights granted under the Long Term Incentive Plan and approved at Ludowici's 2011 AGM as set out in part 1 of Schedule 2.

Ludowici Board means the board of directors of Ludowici from time to time including any committee of the Board with the authority to determine a relevant matter.

Ludowici Director means a director of Ludowici from time to time.

Ludowici Group means Ludowici and its Related Bodies Corporate.

Ludowici Material Transaction means a transaction entered into by Ludowici or a subsidiary that:

- (i) is not in the ordinary course of business and:
 - (A) in relation to sub-clauses (a) to (f) in this definition of Ludowici Material Transaction, has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$500,000 or more, or when aggregated with related transactions, \$500,000 or more; or
 - (B) in relation to sub-clauses (g) to (i) in this definition of Ludowici Material Transaction, has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$50,000 or more, or when aggregated with related transactions, \$50,000 or more; or

- (ii) has a value or involves a liability (whether actual, contingent or prospective) or expenditure, as the case may be, of \$2.5 million or more, or when aggregated with related transactions, \$2.5 million or more,

and which (in respect of (i) or (ii)) transaction is:

- (a) an acquisition, offer to acquire or agreement to acquire any asset or interest in an asset (excluding any acquisition for which there exists a binding agreement as at the date of this document and which has been disclosed to FLS in writing prior to the execution of this document);
- (b) a disposal, offer to dispose or agreement to dispose of any asset or interest in an asset (excluding any disposal for which there exists a binding agreement as at the date of this document which has been disclosed to FLS in writing prior to the execution of this document);
- (c) a joint venture or partnership in respect of any asset or undertaking;
- (d) enter into, terminate, extend, renew or vary any commitment (including any non-contractual commitment or undertaking);
- (e) the entering into any new debt or loan agreements (which, for the avoidance of doubt, does not include drawing down on existing finance facilities in the ordinary course of business);
- (f) an exercise of a contractual right or other option to renew or extend, or otherwise renewing or extending, an existing agreement (including under any lease);
- (g) a variation of the employment arrangements of any of its directors or employees with the effect of increasing the remuneration, including but not limited to bonuses, incentives, severance pay and pensions contribution, of the director or employee, or changing the notice period or terminating the employment of, the director or employee;
- (h) the acceleration of the rights of any of its directors or employees to compensation or benefits of any kind (including under any executive or employee share plans) other than in respect of the Options or the LTIP Rights as a result of the Proposal;
- (i) the payment of any bonus, termination or retention payment to any of its directors or employees other than in accordance with a contract in place at the date of this document; or
- (j) a new contract of employment under which the annual remuneration of the director or employee is \$200,000 or more,

other than, in respect of (i) and (ii), pursuant to an existing contractual obligation or with FLS' prior written consent (such consent not to be unreasonably withheld) or, in respect of (ii), the entry into, variation, renewal or extension of a customer contract in the ordinary course of business and on terms that Ludowici, acting reasonably, considers to be normal commercial terms.

Ludowici Prescribed Event means the occurrence of the following (other than any matter consented to in writing by FLS):

- (a) Ludowici converts all or any of the Ludowici Shares into a larger or smaller number of shares;

- (b) Ludowici or a subsidiary of Ludowici resolves to reduce its share capital in any way or reclassifies, combines, splits, redeems or repurchases directly or indirectly any of its shares;
- (c) Ludowici or a subsidiary of Ludowici enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Ludowici or a subsidiary of Ludowici issues or authorises the issue of shares or other instruments convertible into, in lieu of or in substitution for shares, or grants an option over its shares, or agrees to make such an issue or grant such an option, excluding any Ludowici Shares issued by Ludowici as a result of the exercise of the Options or the vesting of the LTIP Rights;
- (e) Ludowici or a subsidiary of Ludowici creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of the business, assets or property of the Ludowici Group;
- (f) an Insolvency Event occurs in relation to Ludowici or a subsidiary of Ludowici;
- (g) Ludowici or a subsidiary states its intention to or makes any change to its constitution;
- (h) Ludowici declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets other than a dividend for the six months ending 31 December 2011 not exceeding \$0.20 for each Ludowici Share having regard to the usual dividend payout ratio for Ludowici for the full financial year;
- (i) Ludowici or a subsidiary of Ludowici waives, forgoes or otherwise fails to seek the enforcement of any debt or other liability owed to it by any other entity of an amount greater than \$2.5 million in aggregate (or, in the case of a related party of Ludowici or of any Ludowici Shareholder with a substantial holding, any amount whatsoever).

Ludowici Share means an issued ordinary share in the capital of Ludowici.

Ludowici Shareholder means a registered holder of one or more Ludowici Shares.

Material Adverse Effect, in relation to Ludowici, means any specific or series of related events, matters or circumstance which have had or would with the lapse of time reasonably be expected to have a material adverse effect on the structure, business, assets, liabilities, operations, financial or trading position or performance of Ludowici and its subsidiaries, taken as a whole, in the reasonable opinion of FLS, acting in good faith.

Market Disruption Event means the occurrence of any of the following:

- (a) a general moratorium on commercial banking activities in Australia, Denmark, the United States of America, Brazil, Canada, the United Kingdom or any other country in which FLS or Ludowici (or their respective subsidiaries) operates (**Relevant Jurisdictions**), is declared by the relevant central banking authority in any of those countries, or there is a material disruption in commercial banking or security settlement or clearance services in any of those countries;
- (b) trading in all securities quoted or listed on OMX, ASX, the London Stock Exchange or the New York Stock Exchange is suspended or limited in a material respect; or
- (c) the occurrence of any other material adverse change or material disruption to financial, political or economic conditions, currency exchange rates or controls or financial markets in any of the Relevant Jurisdictions or any change or

development involving a prospective adverse change in any of those conditions or markets,

provided that in the actual and reasonable opinion of FLS that event has, or is likely to have, a material adverse effect on the business or financial position of FLS or Ludowici.

Officer means, in relation to an entity, its directors, officers and employees.

OMX means Nasdaq OMX Copenhagen A/S.

Options means options to acquire a Ludowici Share issued under the "Ludowici Limited Executive Share and Option Plan" as set out in part 2 of Schedule 2.

Proposal means the acquisition by FLS of 100% of the Ludowici Shares on the key terms referred to in clause 2.2 and to be further specified in the Scheme Implementation Agreement.

Regulatory Approvals means any approval of a Government Agency or merger control authority which is necessary to implement the Proposal or Scheme.

Related Body Corporate has the meaning given in the Corporations Act.

Representative means, in relation to a party:

- (a) a Related Body Corporate;
- (b) an Officer of the party or any of the party's Related Bodies Corporate;
- (c) an Adviser to the party or any of the party's Related Bodies Corporate.

Scheme has the meaning given in clause 2.2(a).

Scheme Consideration has the meaning given to that term in clause 2.2(b).

Scheme Implementation Agreement means the agreement referred to in clause 2.1.

Second Court Date means the first day on which the Court hears the application for an order under section 411(4)(b) of the Corporations Act approving the Scheme or, if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned or appealed application is heard.

Sensitive Information means information relating to the identity of, and pricing terms agreed with, any customer of Ludowici for products which overlap with products provided by FLS.

Timetable means the timetable set out in Schedule 1.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) Words and phrases which are defined by the Corporations Act have the same meaning in this document. If a special meaning is given for the purposes of Chapter 6 or 6A or a provision of Chapter 6 or 6A of the Corporations Act the word or phrase has that meaning.
- (b) A reference to:

- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
 - (d) A word which suggests one gender includes the other genders.
 - (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (g) The expression **this document** includes the agreement recorded in this document.

2. SCHEME IMPLEMENTATION AGREEMENT

2.1 Scheme Implementation Agreement

Subject to termination of this document under clauses 6.5 or 7.1, or otherwise in accordance with this document, FLS and Ludowici agree to negotiate in good faith and finalise in accordance with the Timetable a Scheme Implementation Agreement between FLS (or such affiliate as is nominated by FLS) and Ludowici which will contain the key terms set out in clause 2.2 of this document and such terms and conditions as may otherwise be agreed by the parties.

2.2 Key terms of the Scheme Implementation Agreement

The parties agree that the Scheme Implementation Agreement must include terms and conditions which incorporate the following matters:

- (a) **(Scheme of arrangement)** The Proposal is to be effected by way of a scheme of arrangement pursuant to Part 5.1 of the Corporations Act under which FLS would acquire all of the Ludowici Shares (the **Scheme**).
- (b) **(Consideration)** The consideration to be provided by FLS under the Scheme will be \$7.20 for each Ludowici Share less the amount of any dividend or distribution declared or paid by Ludowici on or after the date of this document (**Scheme Consideration**).
- (c) **(Ludowici Board recommendation)** The Ludowici Board will unanimously recommend the Scheme and agree to vote the Ludowici Shares to which they are beneficially entitled or for which they hold undirected proxies in favour of the

Scheme, subject only to the qualifications that no Competing Proposal emerges which is superior (in terms of consideration and terms/conditions taken as a whole) and an independent expert recommends that the Scheme is in the best interests of Ludowici Shareholders.

- (d) **(Change in Ludowici Board recommendation)** The Ludowici Board will not withdraw or change their recommendation or change their voting intentions as described in paragraph (c) unless the Ludowici Board has determined in good faith and acting reasonably, after having obtained written advice from their legal and, if appropriate, their financial advisers, that:
- (i) the Ludowici Directors are by virtue of their fiduciary or statutory duties:
 - (A) no longer able to recommend to Ludowici Shareholders that the Scheme be approved; or
 - (B) no longer consider that the Scheme is in the best interests of Ludowici Shareholders and accordingly are required to withdraw such recommendation,

provided that the Ludowici Board may only withdraw or change their recommendation pursuant to this sub-paragraph (i) if Ludowici has first made reasonable endeavours to consult with FLS as to the matters, occurrences or events that would give rise to consideration of the withdrawal or change of recommendation; or
 - (ii) a Competing Proposal constitutes a superior proposal to the Scheme (in terms of consideration and terms/conditions taken as a whole) and FLS decides not to exercise its matching right in accordance with clause 5.5.
- (e) **(Conditions)** The Scheme will be subject to the satisfaction (or waiver by the relevant party, if applicable) of various conditions including:
- (i) **(Regulatory Approvals)** all Regulatory Approvals required to implement the Scheme are granted or obtained on terms reasonably acceptable to FLS and those regulatory approvals are not withdrawn, cancelled or revoked prior to the implementation of the Scheme;
 - (ii) **(shareholder approvals)** the approval by Ludowici Shareholders of the Scheme by the requisite majority of Ludowici Shareholders;
 - (iii) **(no Ludowici Prescribed Event or Material Adverse Effect)** that after the date of the Scheme Implementation Agreement there is no:
 - (A) Ludowici Material Adverse Effect; or
 - (B) Ludowici Prescribed Event;
 - (iv) **(no restraint adversely affecting implementation)** 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 Implementation is in effect at 8.00 am on the Second Court Date;
 - (v) **(Options)** that either:
 - (A) Patrick Largier enters into an agreement with Ludowici in a form approved by FLS prior to the date of despatch of a Scheme Booklet in respect of the Scheme pursuant to which Patrick

Largier agrees to exercise all of his Options in sufficient time for the Ludowici Shares issued on exercise of the Options to participate in the Scheme;

- (B) Patrick Largier, Ludowici and FLS enter into an agreement in a form approved by FLS prior to the date of despatch of a Scheme Booklet in respect of the Scheme under which the Options are cancelled (or at FLS' direction, transferred to FLS) with effect from a date to be agreed but in any event no later than the Effective Date for consideration equal to the Scheme Consideration less any amount payable to Ludowici in respect of the exercise of the Options; or
- (C) a combination of (A) and (B) above,

provided all such Options are either exercised in sufficient time to participate in the Scheme, transferred to FLS or cancelled no later than the Effective Date;

- (vi) **(LTIP Rights)** that either:
 - (A) all of the LTIP Rights vest in Patrick Largier and the Ludowici Shares issued on vesting are issued in sufficient time for those Ludowici Shares to participate in the Scheme; or
 - (B) Patrick Largier, Ludowici and FLS enter into an agreement in a form acceptable to FLS under which the LTIP Rights are cancelled (or at FLS' direction, transferred to FLS) with effect from a date to be agreed but in any event no later than the Effective Date for consideration equal to the Scheme Consideration,

provided all such LTIP Rights are vested in sufficient time to participate in the Scheme, transferred to FLS or cancelled no later than the Effective Date;
- (vii) **(statement of voting intention)** that no later than the date on which the Scheme Implementation Agreement is executed, the Family Shareholders make a public announcement either directly or through Ludowici confirming that in the absence of a superior proposal they:
 - (A) support the Scheme; and
 - (B) will vote or cause to be voted 5,796,179 Ludowici Shares representing all the Ludowici Shares held or controlled by them in favour of the Scheme; and
- (viii) **(due diligence)** any other terms and conditions reasonably required by FLS as a result of its due diligence investigations, it being understood and agreed that FLS will endeavour to minimise the conditions to the Scheme Implementation Agreement.
- (f) **(Board changes)** On the Scheme implementation date such persons as nominated by FLS will be appointed to the Ludowici Board and such persons as requested by FLS will retire from the Ludowici Board and confirm that they have no outstanding Claims against Ludowici.
- (g) **(Conduct of business)** During the term of the Scheme Implementation Agreement, Ludowici must conduct and shall cause its subsidiaries and affiliates to conduct their businesses in a manner to be agreed in the Scheme Implementation

Agreement which will include a requirement to conduct their respective businesses in the ordinary course and consistent with past practice and a specific requirement not to enter into or make any Ludowici Material Transaction, with certain exceptions including for matters which have previously been disclosed to the ASX.

- (h) **(Exclusivity arrangements)** There are to be exclusivity arrangements which are substantially on the same terms as those provisions set out in clause 5 and which are to operate for such period that is no longer than is reasonable having regard to relevant regulatory policies.
- (i) **(Break fee)** There is to be a break fee payable on substantially the same terms as those provisions set out in clause 3 (except clause 3.2(a) and 3.2(b)).
- (j) **(Sunset date)** Each party shall have the right to terminate the Scheme Implementation Agreement if the Scheme has not become Effective by 31 December 2012 (or by such other date as may be agreed).
- (k) **(Announcement by Ludowici)** Ludowici must make an announcement, in a form agreed between Ludowici and FLS which includes a public statement (on the basis of written statements made to it by each of its directors) that each director of Ludowici:
 - (i) considers the Scheme to be in the best interest of Ludowici Shareholders and recommends to Ludowici Shareholders that the Scheme be approved; and
 - (ii) who owns or controls Ludowici Shares will vote those Ludowici Shares in favour of the Scheme,

subject to no superior Competing Proposal emerging and an independent expert recommending that the Scheme is in the best interests of Ludowici Shareholders.
- (l) **(warranties and representations and termination rights)** warranties and representations and termination rights which are customary in transactions of this nature or as reasonably required by FLS and Ludowici, including a termination right for material breach of the Scheme Implementation Agreement.

3. PAYMENTS TO FLS

3.1 Background

- (a) Ludowici believes that the Scheme will provide significant benefits to Ludowici and its shareholders and acknowledges that FLS will incur significant costs in connection with carrying out due diligence as contemplated by this document and in connection with performing its obligations under the Scheme.
- (b) FLS has requested that provisions be made in this document for the payments set out in clause 3.2 in the absence of which it would not have entered into this document.
- (c) Ludowici:
 - (i) believes that it is appropriate to agree to the payments which it agrees to make under this clause 3 in order to secure FLS' participation in the Scheme; and
 - (ii) acknowledges that the amount it has agreed to pay FLS under this clause 3 is an amount which is appropriate to compensate FLS for its

reasonable external and internal costs and opportunity costs in connection with the due diligence and the Scheme.

3.2 Payment by Ludowici to FLS

Ludowici undertakes to pay FLS:

- (a) the Incurred Amounts up to a maximum of \$2.2 million (exclusive of GST) if prior to the End Date:
 - (i) FLS has not terminated this document under clause 6.5 and:
 - (A) is endeavouring in good faith to complete its due diligence or has confirmed that it has completed due diligence;
 - (B) has confirmed that it is prepared to execute a Scheme Implementation Agreement on the terms set out in this document; and
 - (C) a Scheme Implementation Agreement is not executed by Ludowici by the date specified in the Timetable subject to any Postponement Period;
 - (ii) FLS terminates this document under:
 - (A) clauses 7.1(b) or 7.1(c), where the Ludowici Prescribed Event or Ludowici Material Transaction (as applicable) was a corporate action of, primarily caused by, or within the control of, Ludowici or its subsidiaries; or
 - (B) clause 7.1(d);
 - (iii) Ludowici accepts or enters into, or offers to accept or enter into, any agreement, arrangement or understanding regarding a Competing Proposal or any other transaction that may reduce the likelihood of entering into a Scheme Implementation Agreement or success of the Scheme; or
 - (iv) Ludowici is in material breach of any provision of this document and the relevant breach is a wilful or deliberate breach by Ludowici or arises as a result of the gross negligence of Ludowici or the failure by Ludowici to take reasonable steps to prevent the breach, and this document is terminated by FLS as a result of that breach;
- (b) \$2.2 million (exclusive of GST) if prior to the End Date, FLS is endeavouring in good faith to complete its due diligence or has confirmed that it has completed due diligence, and has confirmed that that it is prepared to execute the Scheme Implementation Agreement on the terms contemplated by this document and:
 - (i) any Ludowici Director indicates he is no longer willing to recommend the Scheme on the terms set out in the form of announcement agreed under clause 9(a) if a Scheme Implementation Agreement is signed; or
 - (ii) a Competing Proposal is announced, made or becomes open for acceptance prior to the End Date and within 8 months after the date of this document, under that Competing Proposal the relevant bidder:
 - (A) acquires a relevant interest in more than 20% of all Ludowici Shares and that Competing Proposal is (or becomes) free from any defeating conditions;

- (B) acquires all or a substantial part of the assets of Ludowici or the Ludowici Group;
 - (C) acquires control of Ludowici, within the meaning of section 50AA of the Corporations Act; or
 - (D) otherwise acquires or merges with Ludowici (including by way of reverse takeover bid, reverse scheme of arrangement of dual listed companies structure); or
- (c) \$2.2m (exclusive of GST) if a Scheme Implementation Agreement has been signed and:
- (i) any Ludowici Director does not recommend the Scheme or withdraws or adversely modifies an earlier recommendation or approves or recommends or makes an announcement in support of a Competing Proposal or any other transaction that may reduce the likelihood of success of the Scheme or announces an intention to do any of these acts other than as a result of:
 - (A) a condition precedent in the Scheme Implementation Agreement not being satisfied or becoming incapable of being satisfied (except for the condition precedent set out in clause 2.2(e)(iii)(B) or where satisfaction of the condition precedent is waived by FLS where it is entitled to do so), other than as a result of a breach by Ludowici of any obligation it may have in the Scheme Implementation Agreement in respect of ensuring those conditions precedent are satisfied; or
 - (B) the independent expert failing to conclude in the Independent Expert's Report that the Scheme is in the best interests of Ludowici's Shareholders; or
 - (ii) a Competing Proposal is announced, made or becomes open for acceptance and within 8 months after the date of this document, under that Competing Proposal the relevant bidder:
 - (A) acquires a relevant interest in more than 20% of all Ludowici Shares and that Competing Proposal is (or becomes) free from any defeating conditions;
 - (B) acquires all or a substantial part of the assets of Ludowici or the Ludowici Group;
 - (C) acquires control of Ludowici, within the meaning of section 50AA of the Corporations Act; or
 - (D) otherwise acquires or merges with Ludowici (including by way of reverse takeover bid, reverse scheme of arrangement of dual listed companies structure); or
 - (iii) Ludowici is in material breach of any provision of that Scheme Implementation Agreement and the Scheme Implementation Agreement is terminated.

3.3 Demand for payment

- (a) If an event referred to in clause 3.2(a) occurs:

- (i) any demand by FLS for payment under clause 3.2(a) must be in writing and attach copies of invoices showing a breakdown of all costs incurred and paid or payable by FLS that form part of the Incurred Amount. For the purposes of calculating the Incurred Amount payable under clause 3.2(a), FLS must only include in its invoice costs which it has incurred or and paid or which are payable by it for bona fide services actually provided in respect of the transaction contemplated by this document; and
 - (ii) Ludowici must pay to FLS within 10 Business Days of receipt of the demand and invoices referred to in 3.3(a)(i) above, failing which, the due amount shall be subject to interest of 5% above the 1 Month EURIBOR interest rate from the 10 Business Day after FLS' demand was made and invoices provided, until payment has been received by FLS.
- (b) If an event referred to in clause 3.2(b) or 3.2(c) occurs, any demand by FLS for payment under clause 3.2(b) or 3.2(c) must be in writing and Ludowici must pay the amount referred to in clause 3.2(b) or 3.2(c) to FLS within 10 Business Days of receipt of the demand, failing which, the due amount shall be subject to interest of 5% above the 1 Month EURIBOR interest rate from the 10 Business Day after FLS' demand was made, until payment has been received by FLS.
 - (c) Subject to clause 3.3(d), FLS acknowledges and agrees that if an amount is paid to it under clause 3.2, that payment constitutes its sole and exclusive remedy in respect of the matter giving rise to the payment.
 - (d) If an event provided for in clause 3.2(c)(iii) or 3.2(a)(iv) leads to the Proposal not being implemented and the relevant breach is a wilful or deliberate breach by Ludowici or arises as a result of the gross negligence of Ludowici, FLS shall be entitled to claim for damages for any direct losses incurred by FLS in excess of the payment made under clause 3.2.
 - (e) Subject to claims referred to in clause 3.3(d) above, the maximum amount which may be recovered:
 - (i) in respect of the events referred to in clause 3.2(a), is the Incurred Amount; and
 - (ii) in respect of the events referred to in clause 3.2(b) and 3.2(c), is \$2.2 million,
 and not greater than \$2.2 million in aggregate.

4. CONDUCT OF BUSINESS

4.1 Conduct of the business

From the date of this document up to and including the date on which the Scheme Implementation Agreement is signed, Ludowici must (and must procure that each of its subsidiaries) conduct its business in the ordinary course, in substantially the same manner and at the same locations as conducted on the date of this document, and to the extent consistent, use reasonable efforts to:

- (a) preserve intact its business organisation;
- (b) keep available the services of its officers and employees;
- (c) preserve its relationship with customers, suppliers, licensors, licensees and others having business dealings with it; and

- (d) maintain its business and assets, including maintaining at least its current level of insurance,

as in place on the date of this document, except as otherwise agreed between the parties.

4.2 Exception

Clause 4.1 does not apply to anything:

- (a) which Ludowici is required to do, permitted to do or is permitted not to do, under or in accordance with this document; or
- (b) in respect of which FLS consents (such consent not to be unreasonably withheld or delayed).

5. EXCLUSIVITY

5.1 No-shop restriction

- (a) During the term of this document, Ludowici must ensure that neither it nor any of its Representatives, directly or indirectly solicits, invites, facilitates, encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any person in relation to a Competing Proposal.
- (b) Nothing in paragraph (a) prevents Ludowici from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally.

5.2 No-talk restriction

Subject to clause 5.6, during the term of this document, Ludowici must ensure that neither it nor any of its Representatives, negotiates or enters into, continues or participates in negotiations or discussions with any other person regarding a Competing Proposal, even if:

- (a) that person's Competing Proposal was not directly or indirectly solicited, initiated or encouraged by Ludowici or any of its Representatives; or
- (b) that person has publicly announced their Competing Proposal.

5.3 No due diligence

Without limiting clause 5.2 but subject to clause 5.6, during the term of this document, Ludowici must not:

- (a) solicit, initiate, facilitate or encourage any party (other than FLS or its Representatives) to undertake due diligence on Ludowici or its Related Bodies Corporate; or
- (b) make available to any other person (other than FLS or its Representatives) or permit such person to receive any non-public information relating to Ludowici or its Related Bodies Corporate.

This clause 5.3 does not prevent Ludowici from providing information to ASX or Ludowici's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into the Scheme Implementation Agreement.

5.4 Notification

During the term of this document, Ludowici must immediately inform FLS if Ludowici is approached by any person to engage in any activity that would breach its obligations under clauses 5.1, 5.2 or 5.3 (or would breach its obligations under those clauses but for the operation of clause 5.6) and immediately provide in writing to FLS:

- (a) the identity of the person; and
- (b) details of the expression of interest and/or proposal or proposed Competing Proposal made by the person making the approach and details of any discussions between such persons and Ludowici (or its Representatives)

unless the Ludowici Board has determined, in good faith and acting reasonably, after having obtained written advice from its legal and, if appropriate, its financial advisers that notifying FLS would be likely to constitute a breach of the Ludowici Directors' fiduciary or statutory obligations.

5.5 Matching right

- (a) During the term of this document, Ludowici must not recommend a Competing Proposal, or enter into any agreement, arrangement or understanding to undertake a Competing Proposal, unless it has first:
 - (i) notified FLS in writing of the material terms of the Competing Proposal and the person or persons proposing the Competing Proposal; and
 - (ii) given FLS at least 3 Business Days after provision of that information in which to provide a matching or superior deal to the relevant Competing Proposal (**FLS Counter Proposal**).
- (b) Ludowici must use its best endeavours to procure that the Ludowici Directors consider any FLS Counter Proposal in good faith and, if the Ludowici Directors determine that the terms and conditions of the FLS Counter Proposal taken as a whole are no less favourable than those of the relevant Competing Proposal, Ludowici and FLS must each use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the FLS Counter Proposal as soon as reasonably practicable, and Ludowici must use its best endeavours to procure that each Ludowici Director makes a public statement to the Ludowici Shareholders recommending the FLS Counter Proposal to the Ludowici Shareholders

5.6 Exceptions

The restrictions in clauses 5.2 and 5.3 do not apply to the extent that they restrict Ludowici or the Ludowici Board from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated or initiated by Ludowici or the Ludowici Board in contravention of clause 5.1) provided that the Ludowici Board has determined, in good faith and acting reasonably, after having obtained written advice from its legal and, if appropriate, its financial advisers that:

- (a) the Competing Proposal is a superior proposal to the Scheme, or would be a superior Competing Proposal to the Scheme if it is proposed; and
- (b) failing to respond to such bona fide Competing Proposal would be likely to constitute a breach of the Ludowici Directors' fiduciary or statutory obligations.

6. DUE DILIGENCE

6.1 Acknowledgements in respect of due diligence

- (a) FLS agrees and acknowledges that:
 - (i) it will focus on material issues, having regard to management commitments and the impact of the due diligence process on the business; and
 - (ii) Sensitive Information in the material provided in the data room may initially be redacted, where Ludowici considers it appropriate to do so, with Ludowici not obliged to provide such information (**Redacted Information**) to FLS until the end of the due diligence process following confirmation by FLS to Ludowici that, subject to FLS not identifying any of the matters, occurrences or events referred to in clause 6.5 in the Redacted Information, it is prepared to execute the Scheme Implementation Agreement on the terms contemplated by this document or as otherwise agreed between the parties. The parties agree to consult in good faith to determine a reasonable period for FLS' review of the Redacted Information, and failing agreement between the parties will be at least 3 days.
- (b) Ludowici agrees and acknowledges that:
 - (i) the due diligence process conducted by FLS in relation to the Proposal is intended to be a comprehensive due diligence; and
 - (ii) it will use all reasonable efforts to provide FLS with full disclosure in relation to the Ludowici business.

6.2 Access to premises, books and records

Ludowici agrees to:

- (a) provide FLS and its Advisers with access to an electronic data room in accordance with the Timetable which is reasonably populated with Due Diligence Information and use reasonable endeavours to ensure that such data room is fully populated with the Due Diligence Information which has been identified by FLS as being priority information, by the date specified in the Timetable;
- (b) organise for the members of Ludowici's executive management team as requested by FLS to be available to participate in a Q&A kick off meeting in accordance with the Timetable and to present on such matters as reasonably requested by FLS;
- (c) facilitate the conduct of such site visits as FLS reasonably requires, provided that Ludowici is entitled to have a Representative present during all site visits;
- (d) allow FLS and its officers and Advisers such access to the premises, personnel and Advisers of the Ludowici Group as FLS reasonably requires, provided that Ludowici is entitled to have a Representative present when FLS' Representatives are given access to the premises;
- (e) provide any information which FLS reasonably requests as a result of the Q&A kick off meeting and its review of the Due Diligence Information and provide FLS such assistance and facilities which FLS reasonably requires for the purposes of its due diligence investigations; and

- (f) provide any information which it in good faith has reason to believe would be of material interest to FLS and for its decision to propose to acquire the Ludowici Shares at the proposed Consideration,

subject to clause 6.1(a)(ii).

6.3 FLS to complete due diligence

Subject to Ludowici complying with its obligations under clause 6.2, FLS will use its best endeavours to complete its due diligence inquiries as quickly as possible and, in any event, by the date specified in the Timetable or such later date as the parties may agree.

6.4 Extension of Exclusivity Period for non-compliance with Timetable

If there is a delay in the commencement of the due diligence period or FLS has been unable to complete its due diligence in accordance with the Timetable primarily as a result of a delay on the part of Ludowici in providing access to its premises, personnel, books or records (which have been identified as priority information by FLS), and provided FLS is endeavouring in good faith to complete its due diligence, then the Timetable shall be extended, and all of the Timetable events subsequent to the period during which the delay occurred shall be postponed, by the number of days reasonably required by FLS to complete its due diligence having regard to the period of the delay (**Postponement Period**). Where a Timetable event can only occur on a Business Day, then that event will be postponed to the next Business Day falling on or after the Postponement Period.

6.5 Termination Right

If, during that due diligence process, FLS forms the opinion (acting reasonably and in good faith) that there are material matters, occurrences or events which, if known at the time of entry into this document, would have either:

- (a) resulted in FLS not entering into this document; or
- (b) entering into this document but on materially different terms,

then FLS may at its discretion either offer Ludowici to renegotiate the terms so as to reasonably compensate for the consequences of the information that was not generally available prior to the commencement of due diligence or terminate this document by notice in writing to Ludowici. Notwithstanding any offer to renegotiate the terms by FLS:

- (c) FLS may, at any time in the circumstances contemplated by this clause 6.5, terminate this document by notice in writing to Ludowici; and
- (d) Ludowici is not obliged to renegotiate the Scheme Consideration or the key terms of the Scheme specified in clause 2.2 and any failure to renegotiate or reach agreement in those circumstances will not trigger any payment obligations under clause 3.2.

6.6 Cooperation

Ludowici undertakes to reasonably assist FLS and provide FLS with such information as it requires to prepare merger control filings in the necessary jurisdictions. Subject to applicable laws, Ludowici will at the request of FLS take part in non-binding discussions about the possible integration of Ludowici and its subsidiaries into the FLS group. Ludowici (including its Directors and management) will at the reasonable request of FLS take part in the marketing of the Proposal.

7. TERMINATION

7.1 Termination by FLS

FLS may terminate this document by notice in writing to Ludowici if:

- (a) **(Material Adverse Effect on Ludowici)** one or more events, occurrences or matters individually or in aggregate that have or could reasonably be expected to have a Material Adverse Effect on Ludowici, occurs or becomes known to FLS, unless that event, occurrence or matter was due to one or more acts or omissions which FLS expressly consented to in writing;
- (b) **(Ludowici Prescribed Event)** a Ludowici Prescribed Event occurs;
- (c) **(Ludowici Material Transactions)** a Ludowici Material Transaction occurs without the prior written consent of FLS;
- (d) **(no Family Support)** on the date of the announcement contemplated by clause 9 the Family Shareholders, have not, either directly or through Ludowici, made a public announcement in relation to their holding of 5,796,179 Ludowici Shares confirming that in the absence of a superior proposal they:
 - (i) support the Proposal; and
 - (ii) if a Scheme Implementation Agreement is signed they will vote their Ludowici Shares in favour of the Scheme,or the Family Shareholders subsequently withdraw their support of the Proposal or Scheme; or
- (e) **(Market Disruption Event)** a Market Disruption Event occurs.

7.2 Termination for material breach

- (a) A party may terminate this document if the other party (**Defaulting Party**) is in breach of this document and:
 - (i) that breach is material;
 - (ii) other than in relation to a breach of clause 5, the Defaulting Party has been given notice of the breach and the intention to terminate this document if the breach is not remedied; and
 - (iii) where notice is given in accordance with clause 7.2(a)(ii), the breach is not remedied by the Defaulting Party within 5 Business Days (or any such shorter period ending on the End Date) from the time notice is given under that clause,by giving notice in writing to the other party.

- (b) FLS may immediately terminate this document if Ludowici is in breach of clause 5 and that breach is material, by giving notice in writing to Ludowici.

7.3 Obligations on termination

- (a) If a party terminates this document pursuant to this clause 7 or the document terminates pursuant to clause 8 (other than as a result of the entry by the parties into a Scheme Implementation Agreement), all obligations of the parties under this document, other than this clause and clauses 1 (Interpretation), 3.2(a) and (b) (Payment by Ludowici to FLS), 3.3 (Demand for payment), 11 (Notices), 12 (Amendment and Assignment) and 13 (General), immediately cease to be of further force or effect.
- (b) The termination of this document does not affect any Claim arising before this document is terminated or arising in connection with the termination of this document (including with respect to a payment pursuant to clause 3.2) that a party may have against the other party.

8. TERM OF AGREEMENT

This document, and the parties' obligations under it, will terminate upon the earliest of the following to occur:

- (a) 5 March 2012 or, if clause 6.4 applies, the date which is 5 March 2012 plus the Postponement Period;
 - (b) termination by FLS under clause 6.5 or clause 7.1;
 - (c) termination by either party under clause 7.2; or
 - (d) the entry by the parties into a Scheme Implementation Agreement,
- (such date being the **End Date**).

9. ANNOUNCEMENT

- (a) As soon as reasonably practicable after the entry into this document, the parties must jointly release to the ASX the form of announcement regarding this document (which must include a statement as the intention of the Family Shareholders to support the Scheme and, if a Scheme Implementation Agreement is signed, to vote in favour of the Scheme) which has been agreed and initialled by the parties prior to entry into this document. At the same time, FLS will make an announcement of the entering into of this document to OMX.
- (b) Subject to paragraph (a), each party acknowledges that the provisions of clause 4 of the Confidentiality Deed continue to apply in respect of public announcements.

10. WARRANTIES

10.1 Reciprocal representations and warranties

Each party represents and warrants that:

- (a) it is duly incorporated under the laws of the place of its incorporation;

- (b) it has the power and authority to enter into this document and perform and observe all its terms;
- (c) this document has been duly executed and is a legal, valid and binding agreement enforceable against it in accordance with its terms; and
- (d) it is not bound by any contract which may restrict its right or ability to enter into or perform the agreement contained in this document.

10.2 Ludowici representations and warranties

Ludowici represents and warrants to FLS:

- (a) that Schedule 2 accurately records the total number and details of Ludowici Shares, securities convertible into Ludowici Shares, Options and LTIP Rights, notes or other securities issued by Ludowici at the date of this document, and Ludowici is not under any actual or contingent obligation to issue, convert or cancel any securities; and
- (b) that, as at the date of this document, neither it nor any of its Representatives is participating in negotiations or discussions, or have any intention to enter into negotiations or discussions with any other person regarding a Competing Proposal and no agreement, arrangement or understanding exists in relation to a Competing Proposal.

11. NOTICES

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is delivered, it is taken to have been received when it has been left at the addressee's address. If it is sent by mail, it is taken to have been received three Business Days after it is posted. If it is sent by email, it is taken to have been received when the sender receives confirmation on its server that the message has been transmitted.
- (b) A person's mail and email address are those set out below, or as the person notifies the sender:

FLSmidth & Co. A/S

Address: Vigerslev Alle 77, DK-2500 Valby, Denmark
Email: joeh@flsmidth.com
Attention: Johannus Egholm Hansen

Ludowici Limited

Address: 67 Randle Road, Pinkenba, Queensland 4008 Australia
Email: m.day@ludowici.com.au
Attention: Mark Day

12. AMENDMENT AND ASSIGNMENT

12.1 Amendment

This document can only be amended or replaced by another document executed by the parties.

12.2 Assignment

A party may only assign, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.

13. GENERAL

13.1 Governing law

- (a) This document is governed by the law of Queensland.
- (b) Each party submits to the jurisdiction of the courts of Queensland, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

13.2 Liability for expenses

Except as provided in clause 3, each party will pay its own costs and expenses in connection with:

- (a) the negotiation, preparation, execution, and performance of this document; and
- (b) the proposed, attempted or actual implementation of this document.

13.3 Operation of this document

- (a) This document and the Confidentiality Deed contain the entire agreement between the parties about their subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and the Confidentiality Deed and has no further effect.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

13.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

13.5 No merger

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

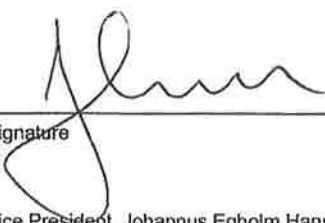
13.6 Counterparts

This document may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement. The parties agree that a facsimile copy of a counterpart received from a party shall be regarded as an original copy of that counterpart received from that party.

EXECUTED as an agreement

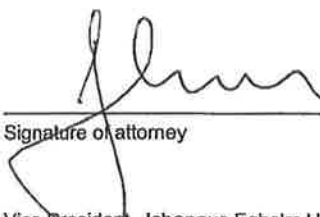
Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED by FLSmidth & Co. A/S:



Signature
Vice President, Johannus Egholm Hansen

Name



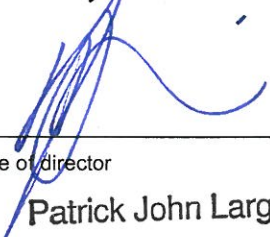
Signature of attorney
Vice President, Johannus Egholm Hansen
on behalf of Chief Executive Officer
Jørgen Huno Rasmussen
as per power of attorney

Name

22 January 2012

Date of power of attorney

EXECUTED by Ludowici Limited:



Signature of director
Patrick John Largier

Name



Signature of director/secretary
ROWAND MARK DAY

Name