

## **ASX and SGX – Merger Implementation Agreement**

ASX and SGX announced today (by separate joint news release) their entry into an agreement for merger. The Merger Implementation Agreement sets out the key commercial terms of the proposed merger and the obligations of the parties in relation to its implementation. The merger is to be effected by scheme of arrangement of ASX.

A copy of the Merger Implementation Agreement is attached.

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Execution version

## Merger implementation agreement

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Our reference 126/13638/80111206

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Merger implementation agreement dated 25 OCTOBER 2010

## Parties

**ASX Limited ABN 98 008 624 691** of Exchange Centre, 20 Bridge Street, Sydney NSW 2000 (**Target**)

**Singapore Exchange Limited Company Registration Number 1999 04940D** of 2 Shenton Way, #19-00 SGX Centre 1, Singapore 068804 (**Bidder**)

## Background

- A. Bidder proposes that it (or its Subsidiary) will acquire all of the Target Shares for consideration per Target Share of \$22 and 3.473 New Bidder Shares, pursuant to a scheme of arrangement under section 411 of the Corporations Act between Target and the holders of Target Shares.
- B. Target has agreed to propose the Scheme and issue the Explanatory Memorandum at the request of Bidder, and Target and Bidder have agreed to implement the Scheme on the terms and conditions of this agreement.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this agreement:

**Amending Act** means an Act of Parliament of the Commonwealth of Australia pursuant to which the Corporations Act is amended such that Division 1 of Part 7.4 of the Corporations Act either expressly permits or does not restrict the acquisition by each member of the Bidder Group, and each person with voting power of more than 20% in Bidder, of 100% voting power in Target or any member of Target Group, the terms of which are acceptable to Bidder acting reasonably.

**Amending Regulation** means a Corporations Act regulation made for the purposes of section 850B(1)(c) of the Corporations Act which prescribes 100% in relation to Target in relation to each member of the Bidder Group, and each person with voting power of more than 20% in Bidder, the terms of which are acceptable to Bidder acting reasonably.

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

**ASX** means the licensed cash equity financial market operated by ASX Limited (ACN 008 624 691).

**Announcement** means an announcement in the form agreed between the parties.

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

**Bidder Break Fee** means \$30,000,000.

**Bidder Facility** means the acquisition financing facility obtained by Bidder in connection with the Transaction substantially on the terms set out in the Bidder Facility Commitment Letter.

**Bidder Facility Commitment Letter** means the commitment letter, fee letter and term sheet in relation to the Bidder Facility agreed by Bidder and the lenders, as at the date of this agreement.

**Bidder Facility Agreements** means the facility agreements and related documents entered or to be entered into by the Bidder Group on or after the date of this agreement in relation to the Bidder Facility and based on the terms set out in the Bidder Facility Commitment Letter.

**Bidder Group** means Bidder and each of its Subsidiaries.

**Bidder Indemnified Parties** means Bidder and its Related Entities and their respective directors, officers and employees.

**Bidder Information** means:

- (a) all information regarding Bidder and its Related Entities that is required by the Corporations Act and the Regulatory Guides to be included in the Explanatory Memorandum including all the information that would be required under sections 636(1)(c), (f), (g), (h), (i), (k), (l) and (m) of the Corporations Act to be included in a bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid, and any other information that the parties agree is Bidder Information for the purposes of this agreement; and
- (b) all information included in the Bidder Shareholders' Circular and the Bidder Disclosure Documentation other than the Target Information.

**Bidder Material Adverse Change** means any event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters:

- (a) diminishes, or could reasonably be expected to diminish (whether now or in the future) consolidated Net Tangible Assets of Bidder Group (excluding any impact from the payment of a Permitted Bidder Dividend) by an amount of at least 30% of the consolidated Net Tangible Assets of Bidder Group as disclosed in its consolidated audited balance sheet as at 30 June 2010; or
- (b) diminishes, or could reasonably be expected to diminish (whether now or in the future) the consolidated recurring net profit after tax of the Bidder Group by an amount of at least SGD\$30,000,000 per year; or
- (c) either have the result, or could be reasonably expected to have the result, that the Bidder Group is unable to carry on its business in substantially the same manner as carried on as at the date of this agreement; or
- (d) which otherwise materially and adversely affects, or could reasonably be expected to materially and adversely affect, the ability of Bidder to perform its obligations under this agreement,

other than an event, occurrence or matter which:

- (e) results directly from or arises as a result of (i) the execution of the Transaction Documents, (ii) the announcement of the Scheme, (iii) the completion of the Transaction, or (iv) the Funding of the Scheme Consideration (including the execution and performance by Bidder or the Bidder Group of the obligations under the Bidder Facility Agreements or the Replacement Bidder Facility Agreements); or
- (f) was fairly disclosed in any announcement on SGX made by Bidder regarding the Bidder Group prior to the parties entering into this agreement,

and disregarding the effect of any:

- (g) general change in equity, future or debt markets (including any change in the volume or value of activity on the SGX or other financial markets or in the level of any one or more market indices, otherwise than if such a change is a direct result of an act or omission by the Bidder Group), interest rates, exchange rates or credit spreads;
- (h) change, or statements made by a Regulatory Authority foreshadowing the prospect of any change, in (in each case including the introduction of) laws, regulations, rules, regulatory policies, codes (whether voluntary or otherwise) or Taxes that affects licensees, market operators or participants in the specific industries in which the businesses of the Bidder Group operate generally regardless of when the change is announced or implemented or whether it has retrospective effect; or
- (i) regulatory or enforcement action taken or foreshadowed to be taken by MAS or any other Regulatory Authority, other than:
  - (i) the suspension or cancellation of Bidder's or a Bidder Material Subsidiary's status as an Approved Holding Company, Approved Exchange or Designated Clearing House (as appropriate) (each term as defined under the SFA) (unless that suspension or cancellation is in connection with the grant of one or more new corresponding licences or approvals to the Bidder Group); or
  - (ii) the commencement of enforcement proceedings by a Regulatory Authority for contravention by Bidder Group of any law, regulation, rule, regulatory policy or licence condition.

**Bidder Prescribed Occurrence** means the occurrence of any of the following events:

- (a) Bidder converts all or any of its securities into a larger or smaller number of securities;
- (b) Bidder or another member of the Bidder Group (other than a wholly-owned Subsidiary of Bidder) resolves to reduce its capital in any way or resolves to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) Bidder or another member of the Bidder Group (other than a wholly-owned Subsidiary of Bidder) acquires its own shares pursuant to Section 76B of the Companies Act, Chapter 50 of Singapore;
- (d) any member of the Bidder Group issues shares, or grants an option over its shares or agrees to make such an issue or grant such an option, other than:
  - (i) to Bidder or a wholly-owned Subsidiary of Bidder; or
  - (ii) in the case of Bidder, in connection with an existing dividend reinvestment plan (including pursuant to any underwriting of that plan) or incentive scheme or option or performance share plan disclosed to SGX prior to the date of this agreement (including any shares issued upon conversion, vesting or exercise of rights or options issued under the incentive scheme, option or performance share plan);



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- (e) any member of the Bidder Group issues, or agrees to issue, convertible notes or any other security convertible into shares or debt securities, other than to Bidder or a wholly-owned Subsidiary of Bidder;
  - (f) any member of the Bidder Group agrees to pay, declares or pays a dividend or any other form of distribution of profits or return of capital to its members, other than:
    - (i) to Bidder or a wholly-owned Subsidiary of Bidder; and
    - (ii) a Permitted Bidder Dividend.
  - (g) any member of the Bidder Group enters into, terminates or varies in a material respect the terms of any agreement, arrangement or understanding which:
    - (i) requires or would be likely to result in expenditure by a member of the Bidder Group (either alone or together with any other members of the Bidder Group) of SGD\$80,000,000 or more in any year; or
    - (ii) is otherwise material to the business or operations of the Bidder Group as a whole,except for the purposes of the Funding of the Scheme Consideration.
  - (h) without limiting paragraphs (g) or (i), any member of the Bidder Group acquires, leases, agrees to acquire or lease, or offers, proposes or announces a bid for, any assets, properties or businesses, or incurs, agrees to incur or enters into a commitment or a series of commitments involving capital expenditure by the Bidder Group whether in one transaction or a number of such transactions, where the amounts or value involved in such transaction, transactions, commitments or series of commitments of the same or substantially the same kind or which are related, exceeds SGD\$80,000,000 in aggregate;
  - (i) any member of the Bidder Group disposes of, or agrees to dispose of, shares or other securities in a member of the Bidder Group, other than to a wholly-owned Subsidiary of Bidder;
  - (j) any member of the Bidder Group disposes of, or agrees to dispose of, or offers, proposes or announces tenders for, any assets, properties or businesses whether in one transaction or a number of such transactions, where the amount or value involved in such transaction or transactions of the same or substantially the same kind or which are related, exceeds SGD\$30,000,000 in aggregate other than a disposal of, or agreement to dispose of, any shares held by any member of the Bidder Group in any company that is not a member of the Bidder Group pursuant to an initial public offering;
  - (k) any member of the Bidder Group creates or agrees to create any mortgage, charge, lien or other encumbrance over the whole, or any part, of its business or property otherwise than in the ordinary and usual course of business, for the purpose of compliance with prudential or regulatory requirements, or for the purpose of the Funding of the Scheme Consideration;
  - (l) any member of the Bidder Group:
    - (i) makes or repays any loans or advances (other than trade receivables or advances pursuant to arrangements for financial accommodation in existence as at the date of this agreement or in the ordinary and usual course of business) to any other person; or

- (ii) makes capital contributions to, or investments in, any other person or persons in excess of SGD\$10,000,000 in aggregate, other than in the ordinary and usual course of business,

other than where it does so:

- (iii) in favour of a wholly-owned Subsidiary of Bidder or another person in which Bidder Group has an investment as at the date of this agreement; or
- (iv) to satisfy a capital or regulatory requirement imposed by law or a Regulatory Authority;
- (m) an Insolvency Event occurs in relation to Bidder or a Bidder Material Subsidiary;
- (n) the level of the Bidder Group's Consolidated Monthly Indebtedness increases by more than SGD\$40,000,000 as compared with its average Consolidated Monthly Indebtedness over the 3 months before the date of this agreement excluding the impact of the Funding of the Scheme Consideration; or
- (o) Bidder makes or proposes to make any material change to its articles of association other than for the purposes of implementing the Transaction or in connection with the admission of Bidder to the official list of the ASX as an ASX listing, and the quotation of CDIs on the ASX,

other than an event:

- (p) required to be undertaken or procured by the Bidder Group pursuant to the Transaction Documents;
- (q) required to be undertaken or procured by the Bidder Group pursuant to the Bidder Facility Agreements or the Replacement Bidder Facility Agreements;
- (r) to which Target has provided its written consent; or
- (s) fairly disclosed in any announcement on the SGX made by Bidder regarding the Bidder Group prior to the parties entering into this agreement.

**Bidder Material Subsidiary** means Singapore Exchange Securities Trading Limited, Singapore Exchange Derivatives Trading Limited, The Central Depository (Pte) Limited, Singapore Exchange Derivatives Clearing Limited and Singapore Commodity Exchange Limited.

**Bidder Disclosure Documentation** means the prospectus, offering or information memorandum offer information statement or any other disclosure document to be issued by or on behalf of Bidder Group in compliance with applicable laws and regulations, in connection with any debt, convertible debt instruments, equity, and/or convertible equity instruments to be issued by Bidder Group directly or indirectly in connection with the Transaction or the Funding of the Scheme Consideration, and any other document(s) which may be issued by or on behalf of Bidder Group to amend, revise, supplement or update the prospectus, offering or information memorandum, offer information statement or any other disclosure document from time to time.

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

**Bidder Share Registry** means Boardroom Limited 3 Church Street # 08-01 Samsung Hub Singapore 049483.

**Bidder Shareholders' Circular** means the circular to the shareholders of Bidder in relation to the Bidder Shareholder Resolutions and any other document(s) which may be issued by Bidder to amend, revise, supplement or update the circular from time to time.

**Bidder Shareholder Resolutions** means the ordinary resolutions that must be passed by shareholders of Bidder in connection with the Transaction, being approval of the Transaction and the issue of new Bidder Shares (including in the form of CDIs) pursuant to the Scheme.

**Bidder Special Resolutions** means the resolutions proposed to be passed by shareholders of Bidder in connection with the Transaction, being approval of the amendments to Bidder's articles of association for the purpose of implementing the Transaction in connection with the admission of Bidder to the official list of ASX as an ASX listing and the quotation of CDIs on the ASX.

**Bidder Warranties** means the warranties made by Bidder set out in clause 11.1.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney and Singapore.

**CDI** means a CHESS Depository Interest, being a unit of beneficial ownership in a New Bidder Share registered in the name of CDN.

**CDN** means CHESS Depository Nominees Pty Ltd ACN 071 346 506.

**Competing Proposal** means a transaction or arrangement which is proposed by a Third Party pursuant to which a Third Party will, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) acquire a Relevant Interest in any Target Shares, as a result of which, the Third Party will have a Relevant Interest in 15% or more of the Target Shares;
- (b) otherwise acquire control of Target or the Target Group within the meaning of section 50AA of the Corporations Act; or
- (c) directly or indirectly acquire, merge with, or acquire (or have the right to so merge with or acquire) a significant economic interest in Target or all or a significant part of the business of the Target Group, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the Target Group or other synthetic merger or any other transaction or arrangement.

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

**Confidentiality Agreement** means the mutual non disclosure agreement between Bidder and Target dated 17 August 2010.

**Consolidated Monthly Indebtedness** means consolidated total liabilities excluding any participant collateral held or receivable if this appears on the balance sheet of that entity, as at month end.

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

**Court** means the Supreme Court of New South Wales or such other court of competent jurisdiction as Target and Bidder agree in writing.

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

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

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

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

**End Date** means the date which is 9 months after the date of this agreement, or such other date agreed in writing between Target and Bidder.

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

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

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

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

**Funding of the Scheme Consideration** means any agreements or arrangements entered into or undertaken by or on behalf of any member of the Bidder Group to raise debt and/or equity to fund the payment of the Scheme Consideration under the Scheme (and the costs and expenses relating thereto), or to refinance the Bidder Facility or any other debt and/or equity funding put in place for the purpose of funding payment of the Scheme Consideration under the Scheme (and the costs and expenses relating thereto), whether prior to, on, or after the date of this agreement, including the Bidder Facility Agreements and the Replacement Bidder Facility Agreements.

**Implementation Date** means the date which is 10 Business Days after the Record Date or such other date as Target and Bidder agree in writing.

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

**Independent Expert** means the independent expert to be engaged by Target to express an opinion on whether the Scheme is in the best interests of the Target Shareholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by the Target Board after announcement of the transactions contemplated by this agreement.

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

**Insolvency Event** means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed;
- (e) the entity ceasing, or threatening to cease to, carry on the business that it conducts as at the date of this agreement;
- (f) the entity being or becoming unable to pay its debts when they fall due;
- (g) the entity executing a deed of company arrangement; or
- (h) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property of the entity.

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

**Legislative Instruments Act** means the Legislative Instruments Act (2003) (Cth).

**MAS** means the Monetary Authority of Singapore.

**Net Tangible Assets** means net assets after excluding intangible assets (which intangible assets include software).

**New Bidder Shares** means fully paid ordinary shares in the capital of Bidder to be issued pursuant to the Scheme as part of the Scheme Consideration.

**Permitted Bidder Dividend** means each of:

- (a) the payment of the quarterly dividend for the period ending 30 September 2010 of SGD\$0.04 per Bidder Share;
- (b) a quarterly dividend for the period ending 31 December 2010 of not more than SGD\$0.04 per Bidder Share; and
- (c) a quarterly dividend for the period ending 31 March 2011 of not more than SGD\$0.04 per Bidder Share.

**Permitted Target Dividend** means a fully franked interim dividend not exceeding ninety percent (90%) of Target's consolidated underlying net profit after tax for the half year ending 31 December 2010.

**Policy** means the directors and officers insurance policy effected by Target at the date of this agreement and which presently expires on 30 November 2010, as extended or renewed.

**RBA** means the Reserve Bank of Australia.

**Record Date** means 5.00 pm (Sydney time) on the date which is 5 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and Target.

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange,

in any part of the world.

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

**Regulatory Guides** means all regulatory guides published by ASIC and in force at the date of this agreement.

**Related Entity** of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

**Relevant Interest** has the meaning given in the Corporations Act.

**Replacement Bidder Facility Agreements** means any facility agreements and related documents entered into by any member of the Bidder Group on or after the date of this agreement that replaces or will replace the Bidder Facility contemplated by the Bidder Facility Agreements, provided that the replacement facility contemplated by the Replacement Bidder Facility Agreements will provide substantially the same certainty of funding available to pay the Scheme Consideration as provided by the Bidder Facility Commitment Letter on the date of this agreement.

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

**Sale Agent** means a nominee or nominees appointed by Bidder to hold or sell the New Bidder Shares, whether in the form of CDIs or not, that are attributable to Ineligible Foreign Shareholders under the terms of the Scheme.

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

**Scheme Consideration** means 3,473 New Bidder Shares in the form of CDIs and the amount of A\$22 cash in respect of each Scheme Share, as reduced by the cash amount of any dividend or distribution of Target, other than a Permitted Target Dividend, the record date for which falls during the period commencing on and from the date of this agreement and ending immediately prior to the Implementation Date.

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

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

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

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

**SFA** means the Securities and Futures Act, Chapter 289 of Singapore.

**SGX** means the Singapore Exchange Securities Trading Limited in its capacity as an Approved Exchange under the SFA.

**SGX Listing Manual** means the listing manual of SGX.

**Subsidiary** means a subsidiary within the meaning given to that term in the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal received by Target from a Third Party on or after the date of this agreement which in the determination of the Target Board, acting in good faith, and after receiving advice from its legal and external financial advisors, is more favourable to the Scheme Shareholders (as a whole) than the Transaction, taking into account all aspects of the Competing Proposal, including:

- (i) the value of the consideration payable to Scheme Shareholders under the Competing Proposal and the Tax consequences related to payment of that consideration (as compared to the consideration available under the Transaction);
- (ii) the conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal; and
- (iii) the likely timing required to implement the Competing Proposal.

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

**Target Break Fee** means \$30,000,000.

**Target Director** means each director of Target.

**Target Executive Committee** means the executives who are direct reports to the Managing Director and CEO of Target.

**Target Group** means Target and each of its Subsidiaries.

**Target Information** means:

- (a) all information included in the Explanatory Memorandum, other than the Bidder Information; and
- (b) all information regarding Target and its Related Entities that is required by the SGX Listing Manual, the Securities and Futures (Offer of Investments) (Shares and Debentures) Regulations 2005 (if applicable) and all other applicable securities laws and regulations to be included in the Bidder Shareholders' Circular and the Bidder Disclosure Documentation.

**Target Indemnified Parties** means Target and its Related Entities and their respective directors, officers and employees.

**Target Material Adverse Change** means any event, occurrence or matter which individually or when aggregated with all such events, occurrences or matters:

- (a) diminishes, or could reasonably be expected to diminish (whether now or in the future) consolidated Net Tangible Assets of the Target Group (excluding any impact from the payment of a Permitted Target Dividend) by an amount of at least 30% of the consolidated Net Tangible Assets of the Target Group as disclosed in its consolidated audited balance sheet as at 30 June 2010 ; or
- (b) diminishes, or could reasonably be expected to diminish (whether now or in the future) the consolidated recurring underlying net profit after tax of the Target Group by an amount of at least \$30,000,000 per year; or
- (c) either have the result, or could be reasonably expected to have the result, that the Target Group is unable to carry on its business in substantially the same manner as carried on as at the date of this agreement; or
- (d) which otherwise materially and adversely affects, or could reasonably be expected to materially and adversely affect, the ability of Target to perform its obligations under this agreement,

other than an event, occurrence or matter which:

- (e) results directly from the execution of the Transaction Documents or in connection with announcement of the Scheme and the completion of the Transaction; or
- (f) was fairly disclosed in any announcement to the ASX made by Target regarding the Target Group prior to the parties entering into this agreement,

and disregarding the effect of any:

- (g) general change in equity, futures or debt markets (including any change in the volume or value of activity on the ASX or other financial markets or in the level of one or more market indices, otherwise than if such a change is a direct result of an act or omission by the Target Group), interest rates, exchange rates or credit spreads;
- (h) change, or statements made by a Regulatory Authority foreshadowing the prospect of any change, in (in each case including the introduction of) laws, regulations, rules, regulatory policies, codes (whether voluntary or otherwise) or Taxes that affects licensees, market operators or participants in the specific industries in which the businesses of the Target Group operate generally, including:
  - (i) changes to the regulation of Australian financial markets or clearing and settlement facilities (including the introduction or alteration of market integrity rules), in connection with the introduction or facilitation of competition in Australian financial markets or clearing and settlement facilities;
  - (ii) the grant of one or more additional Australian market licences or Australian CS facility licences or any other change that facilitates, or may facilitate, entry into an Australian market by, or provide benefits to, a competitor of a member of the Target Group (such as the adoption or imposition of any voluntary code or access code); or
  - (iii) the imposition or alteration of fees payable by the Target Group to a Regulatory Authority, or of information sharing obligations on the



Target Group in favour of a Regulatory Authority, in connection with the introduction or facilitation of competition in Australian financial markets or clearing and settlement facilities;

regardless of when the change is announced or implemented or whether it has retrospective effect; or

- (i) regulatory or enforcement action taken or foreshadowed to be taken by ASIC, the RBA or any other Regulatory Authority, or any action taken or foreshadowed to be taken under any law, regulation, rule or regulatory policy in respect of competition or trade practices by any person who is or may become a competitor of a member of the Target Group, including any action facilitating the entry of one or more new market operators or clearing and settlement operators within an Australian market, other than:
  - (i) the suspension or cancellation of an Australian market licence or Australian CS facility licence of the Target Group (unless that suspension or cancellation is in connection with the grant of one or more new corresponding licences to the Target Group); or
  - (ii) the commencement of enforcement proceedings by a Regulatory Authority for contravention by the Target Group of any law, regulation, rule, regulatory policy or licence condition.

**Target Material Subsidiary** means ASX Operations Pty Limited ACN 004 523 782 and any Subsidiary of Target that holds an Australian financial market licence or an Australian CS facility licence as at the date of this agreement.

**Target Prescribed Occurrence** means the occurrence of any of the following events:

- (a) Target converts all or any of its securities into a larger or smaller number of securities;
- (b) Target or another member of the Target Group (other than a wholly-owned Subsidiary of Target) resolves to reduce its capital in any way or resolves to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) Target or another member of the Target Group (other than a wholly-owned Subsidiary of Target):
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any member of the Target Group issues shares, or grants an option over its shares or agrees to make such an issue or grant such an option, other than:
  - (i) to Target or a wholly-owned Subsidiary of Target; or
  - (ii) in the case of Target, in connection with an existing dividend reinvestment plan announced to the ASX prior to the date of this agreement;

- For personal use only
- (e) any member of the Target Group issues, or agrees to issue, convertible notes or any other security convertible into shares or debt securities, other than to Target or a wholly-owned Subsidiary of Target;
  - (f) any member of the Target Group agrees to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members, other than:
    - (i) to Target or a wholly-owned Subsidiary of Target; or
    - (ii) a Permitted Target Dividend;
  - (g) any member of the Target Group enters into, terminates or varies in a material respect the terms of any agreement, arrangement or understanding which:
    - (i) requires or would be likely to result in expenditure by a member of the Target Group (either alone or together with any other members of the Target Group) of \$63,000,000 or more in any year; or
    - (ii) is otherwise material to the business or operations of the Target Group as a whole;
  - (h) without limiting paragraph (i), any member of the Target Group acquires, leases, agrees to acquire or lease, or offers, proposes or announces a bid for, any assets, properties or businesses, or incurs, agrees to incur or enters into a commitment or a series of commitments involving capital expenditure by the Target Group whether in one transaction or a number of such transactions, where the amounts or value involved in such transaction, transactions, commitments or series of commitments of the same or substantially the same kind or which are related, exceeds \$55,000,000 in aggregate;
  - (i) any member of the Target Group disposes, or agrees to dispose, of shares or other securities in a member of the Target Group, other than to a wholly-owned Subsidiary of Target;
  - (j) any member of the Target Group disposes of, or agrees to dispose of, or offers, proposes or announces tenders for, any assets, properties or businesses whether in one transaction or a number of such transactions, where the amount or value involved in such transaction or transactions of the same or substantially the same kind or which are related, exceeds \$23,000,000 in aggregate;
  - (k) any member of the Target Group creates or agrees to create any mortgage, charge, lien or other encumbrance over the whole, or any part, of its business or property otherwise than in the ordinary and usual course of business or for the purpose of compliance with prudential or regulatory requirements;
  - (l) any member of the Target Group:
    - (i) makes or repays any loans or advances (other than trade receivables or advances pursuant to arrangements for financial accommodation in existence as at the date of this agreement) to any other person; or
    - (ii) makes capital contributions to, or investments in, any other person or persons in excess of \$8,000,000 in aggregate, other than in the ordinary and usual course of business,

other than where it does so:

- (iii) in favour of a wholly-owned Subsidiary of Target or another person in which the Target Group has an investment as at the date of this agreement; or
- (iv) to satisfy a capital or regulatory requirement imposed by law or a Regulatory Authority;
- (m) an Insolvency Event occurs in relation to Target or any Target Material Subsidiary;
- (n) the level of Target Group's Consolidated Monthly Indebtedness increases by more than \$40,000,000 as compared with its average Consolidated Monthly Indebtedness over the 3 months before the date of this agreement;
- (o) any member of the Target Group makes or proposes to make any material change to its constitution, except a change in connection with the implementation of the Transaction; or
- (p) any member of Target Group:
- (i) increases the remuneration of, or pays any bonus or issues any securities to, or otherwise varies the employment arrangements with, any of its directors or executives;
  - (ii) accelerates the rights of any of its directors or executives to benefits of any kind (other than any vesting of performance rights granted by Target before the date of this agreement); or
  - (iii) pays or agrees to pay a director or executive a termination payment (including a 'golden parachute'),
- other than:
- (iv) as provided for in Target's redundancy policy or an existing employment or services agreement;
  - (v) payments or increases in remuneration arising from Target's usual annual remuneration review or otherwise in accordance with Target's remuneration policy set out in its 2010 Annual Report; or
  - (vi) as required by law,

and for the purposes of this subparagraph (p) a reference to an executive is a reference to an executive who is a direct report to the Managing Director and CEO of Target and their respective direct reports,

other than an event:

- (q) required to be undertaken or procured by the Target Group pursuant to the Transaction Documents;
- (r) to which Bidder has provided its written consent; or
- (s) fairly disclosed in any announcement to the ASX made by Target regarding the Target Group prior to the parties entering into this agreement.

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

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

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

**Target Share Registry** means Link Market Services Limited ACN 083 214 537.

**Target Warranties** means the warranties made by Target set out in clause 11.4.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction but excluding any stamp duty payable on any transfer of the Target Shares.

**Third Party** means a person other than Bidder, Target, or their respective Related Entities.

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

**Transaction** means the acquisition by Bidder (or a Subsidiary of Bidder) of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

**Transaction Documents** means:

- (a) this agreement;
- (b) the Scheme; and
- (c) the Deed Poll.

## **1.2 Best and reasonable endeavours**

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

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
- (b) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

## **1.3 Business Day**

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

## 1.4 Interpretation

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

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to \$ or **dollar** is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (l) a reference to a date or time is to that date or time in Sydney, Australia; and
- (m) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## 2. Obligations in relation to Scheme

### 2.1 Target to propose Scheme

Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement. Bidder agrees to assist Target to propose the Scheme on and subject to the terms and conditions of this agreement.

## 2.2 Target and Bidder to Implement Scheme

Target and Bidder agree to implement the Scheme on and subject to the terms and conditions of this agreement.

## 2.3 Bidder may elect a Subsidiary

Target agrees that Bidder may elect under this clause that a wholly-owned Subsidiary of Bidder will acquire the Scheme Shares under the Scheme by giving written notice to Target of the relevant Subsidiary of Bidder that will acquire those shares on or before the First Court Date.

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## 3. Conditions precedent

### 3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.6:

Condition	Right to benefit & waive	Responsibility to satisfy
<p>(a) (Amending Regulation or Amending Act) prior to 8.00 am on the Second Court Date, either:</p> <p>(i) the Amending Regulation has been tabled in each of the House of Representatives and the Senate of the Parliament of the Commonwealth of Australia (each a House) and:</p> <p>A. the last day on which the Amending Regulation may be disallowed under Part 5 of the Legislative Instruments Act has elapsed in respect of each House; and</p> <p>B. the Amending Regulation has not been disallowed, deemed to be disallowed or ceased to have effect in either House; or</p> <p>(ii) the Amending Act has received Royal Assent and will commence prior to the Effective Date.</p>	None	Bidder and Target

Condition	Right to benefit & waive	Responsibility to satisfy
<p>(b) <b>(Ministerial approval)</b> prior to 8.00 am on the Second Court Date either:</p> <p>(i) the Minister responsible for administering the Corporations Act, provides written notice specifying that:</p> <p style="margin-left: 40px;">A. he or she approves each member of the Bidder Group, and each person with voting power of more than 20% in the Bidder, to have voting power of 100% in each member of the Target Group (other than Target) that is a widely held market body (as that term is defined in section 850A of the Corporations Act); and</p> <p style="margin-left: 40px;">B. the approval remains in force indefinitely (or for such other period acceptable to Bidder),</p> <p style="margin-left: 40px;">under section 851B of the Corporations Act. If such approval is subject to conditions those conditions must be acceptable to Bidder, acting reasonably; or</p> <p>(ii) the Amending Act has received Royal Assent and will commence prior to the Effective Date.</p>	None	Bidder and Target
<p>(c) <b>(FIRB approval)</b> prior to 8.00 am on the Second Court Date, the Treasurer of the Commonwealth of Australia has either:</p> <p>(i) provided written notice which is unconditional or subject only to conditions acceptable to Bidder (acting reasonably) that there is no objection under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA) or Australian foreign investment policy to the proposed acquisition by a member of the Bidder Group of the Target</p>	None	Bidder and Target

Condition	Right to benefit & waive	Responsibility to satisfy
<p>Shares, and the proposed acquisition by any other person who is a "foreign person" (for the purposes of the FATA) and who will acquire a substantial interest in the Target Shares as a result of or in connection with the Transaction or the Funding of the Scheme Consideration; or</p> <p>(ii) become precluded from exercising any power to make an order under the FATA in relation to the proposed acquisition by a member of the Bidder Group of the Target Shares, and the proposed acquisition by any other person who is a "foreign person" (for the purposes of the FATA) and who will acquire a substantial interest in the Target Shares as a result of or in connection with the Transaction or the Funding of the Scheme Consideration.</p>		
<p>(d) (ASIC consents) before 8.00 am on the Second Court Date, ASIC issues or provides such consents, waivers or approvals or does such other acts which Bidder and Target (acting reasonably) agree are necessary or practical in relation to or in connection with the Transaction, including:</p> <p>(i) the admission of Bidder to the official list of the ASX and the quotation of Bidder Shares, in the form of CDIs, on the ASX; and</p> <p>(ii) the Funding of the Scheme Consideration.</p> <p>If such consents, waivers, approvals or doing of other acts are subject to conditions those conditions must be acceptable to Bidder and Target, each acting reasonably;</p>	Bidder and Target	Bidder and Target (other than in the case of the Funding of the Scheme Consideration)
<p>(e) (MAS approvals) before 8.00 am on the Second Court Date, MAS issues or provides such consents, approvals or waivers or does such other acts which Bidder (acting reasonably) determines are necessary or</p>	Bidder	Bidder



Condition	Right to benefit & waive	Responsibility to satisfy
<p>practical in relation to or in connection with the Transaction, including:</p> <ul style="list-style-type: none"> <li>(i) the admission of Bidder to the official list of the ASX, and the quotation of Bidder Shares in the form of CDIs on the ASX;</li> <li>(ii) the Funding of the Scheme Consideration; and</li> <li>(iii) the continuing compliance by Bidder and any other member of the Bidder Group (including each member of the Target Group following the Implementation Date) with the applicable regulatory capital and risk requirements prescribed under the SFA (and the regulations and directions thereunder); and</li> <li>(iv) approval for any person who will acquire a 5%, 12% or 20% interest in Bidder on a fully diluted basis in connection with the Transaction or as a result of the Funding of the Scheme Consideration under the SFA,</li> </ul> <p>and if such consents, approval or waivers are subject to conditions, such conditions being satisfactory to Bidder (acting reasonably).</p>		
<p>(f) <b>(no restraint)</b> no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority and no other legal restraint preventing any of the transactions contemplated by this agreement is in effect as at 8.00am on the Second Court Date;</p>	<p>Bidder and Target</p>	<p>Bidder and Target</p>
<p>(g) <b>(Target Material Adverse Change)</b> no Target Material Adverse Change has occurred after the date of this agreement and before 8.00 am on the Second Court Date;</p>	<p>Bidder</p>	<p>Target</p>
<p>(h) <b>(Target Prescribed Occurrence)</b> no Target Prescribed Occurrence has occurred after the</p>	<p>Bidder</p>	<p>Target</p>

Condition	Right to benefit & waive	Responsibility to satisfy
date of this agreement and before 8.00 am on the Second Court Date;		
(i) <b>(Bidder Material Adverse Change)</b> no Bidder Material Adverse Change has occurred after the date of this agreement and before 8.00 am on the Second Court Date;	Target	Bidder
(j) <b>(Bidder Prescribed Occurrence)</b> no Bidder Prescribed Occurrence has occurred after the date of this agreement and before 8.00 am on the Second Court Date;	Target	Bidder
(k) <b>(Target Shareholder approval)</b> Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	Target
(l) <b>(Bidder Shareholder approval)</b> Bidder's shareholders approve the Bidder Shareholder Resolutions by the requisite majorities prior to 8.00 am on the Second Court Date;	None	Bidder
(m) <b>(Court approval)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	Bidder and Target
(n) <b>(Conditional quotation of New Bidder Shares and CDIs)</b> by 8.00 am on the Second Court Date the New Bidder Shares are approved for official quotation on SGX by MAS, and Bidder is admitted to the official list of the ASX as an ASX listing, and the New Bidder Shares in the form of CDIs are approved for official quotation on the ASX, by ASIC subject only to customary conditions and the Scheme becoming Effective;	Bidder and Target	Bidder and Target
(o) <b>(Conditions to Bidder Facility)</b> the conditions to the Bidder Facility Commitment Letter and to drawdown of the Bidder Facility Agreements or, if the Bidder enters into Replacement Bidder Facility Agreements, the conditions to drawdown under those Replacement Bidder Facility Agreements, (in either case, other than those relating to the non-occurrence of a Bidder Material Adverse Change) that are outside of the control of Bidder, have been satisfied or waived in accordance with their terms by 8.00 am on the Second Court Date; and	Bidder	Bidder

Condition	Right to benefit & waive	Responsibility to satisfy
(p) (other Regulatory Authority approvals) prior to 8.00 am on the Second Court Date all other approvals of any Regulatory Authority, which Target and Bidder agree are necessary or desirable to implement the transactions contemplated by this agreement have been obtained either unconditionally or on conditions satisfactory to Bidder acting reasonably and have not been withdrawn or revoked.	Bidder and Target	Bidder and Target

### 3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party must use its best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) other than in the case of the Condition in clause 3.1(f), if both parties are specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (c) each party (other than in the case of the Condition in clause 3.1(o), the Target) must, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law; and
- (d) if, prior to 8.00am on the Second Court Date, an event occurs or is reasonably likely to occur, that may result in the Condition in clause 3.1(f) (*No restraints*) not being satisfied, Bidder and Target must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable, as if clause 3.1(f) (*No restraints*) were a Regulatory Condition and the parties were subject to the requirements of clause 3.3 in relation to such Condition.

### 3.3 Obligations in relation to Regulatory Conditions

Each party must use its best endeavours to ensure that the Regulatory Conditions are satisfied as soon as practicable after the date of this agreement and in particular, without limiting clause 3.2, the party that is specified in the third column of the table in clause 3.1 opposite a Regulatory Condition (or both parties, if both parties are so specified) must use its best endeavours to ensure that the Regulatory Conditions are satisfied as soon as practicable after

the date of this agreement and in any event before the scheduled date for the Scheme Meeting in the Timetable and, in particular, each party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring the satisfaction of the Regulatory Conditions (as applicable) and take all procedural steps it is responsible for as part of such approval process, including responding to requests for information at the earliest practicable time and use best endeavours to obtain such approvals as soon as practicable after the date of this agreement;
- (b) consult with the other party, in advance, in relation to all communications with any Regulatory Authority relating to any such regulatory approval (other than those of a purely mechanical or housekeeping type);
- (c) keep the other party informed of progress in relation to each such regulatory approval and of any material matters raised by, or conditions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory approval; and
- (d) provide copies of all documents provided to and received from each relevant Regulatory Authority in relation to each such regulatory approval (including before the date of this agreement), on a confidential basis, to the other party,

provided that, in each case:

- (e) the party applying for the approval may withhold or redact information or documents if and to the extent that they are confidential to a third party or commercially sensitive and confidential to the applicant;
- (f) nothing in this clause 3.3 or any other provision of this agreement requires a party to disclose materially commercially sensitive information to the other party; and
- (g) the party applying for the approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a Regulatory Approval with all assistance and information reasonably requested by the applicant in connection with the application for and obtaining the approval.

### **3.4 Obligations in relation to Amending Regulation or Amending Act**

Without limiting clause 3.3, Bidder and Target must take all steps necessary to ensure that the Regulatory Condition set out in clause 3.1(a) is satisfied as soon as practicable after the date of this agreement and in any event before the scheduled date for the Scheme Meeting in the Timetable and in particular:

- (a) prepare and lodge with the Treasurer of the Commonwealth of Australia or other responsible minister an application for the Amending Regulation or Amending Act to be made, including submissions in support of the application for the Amending Regulation, Amending Act or both (as agreed between Bidder and Target, each acting reasonably) and guidance regarding the urgency with which the Amending Regulation or Amending Act is required;
- (b) co-operate with and provide any information requested by the Treasurer of the Commonwealth of Australia or any other Regulatory Authority or officer thereof in connection with the making of the Amending Regulation or Amending Act,

including facilitating any consultation process regarding the Amending Regulation or Amending Act;

- (c) keep each other informed of progress of the application for the Amending Regulation or Amending Act, and of any material matters raised by, or conditions or other arrangements proposed by, or to, any Regulatory Authority which relate to the Amending Regulation or Amending Act; and
- (d) provide copies of all documents provided to and received from the Treasurer of the Commonwealth of Australia and any other each relevant Regulatory Authority in relation to the Amending Regulation or Amending Act (including before the date of this agreement), on a confidential basis, to the other party subject to the limitations set out in clauses 3.3(e) and 3.3(f).

### **3.5 Notice in relation to satisfaction of Conditions**

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
  - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; and
  - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, immediately notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.6 as soon as possible, (in any event before 5.00 pm on the Business Day before the Second Court Date) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

If there occurs a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied or, any of the Bidder Special Resolutions is not passed at the same meeting as the Bidder Shareholder Resolutions, being an occurrence or event which may prevent the Condition in clause 3.1 (n) being satisfied, the parties will consult in good faith for 5 Business Days to determine whether an alternative solution can be agreed.

### **3.6 Waiver of Conditions**

- (a) A Condition is only for the benefit of:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
  - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.

- (b) A Condition may be waived and may only be waived:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, by that party by written notice to the other party; or
  - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.6 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### 3.7 Failure of Conditions

A party is entitled to terminate this agreement by notice to the other party at any time before the Effective Date:

- (a) if any Condition has become incapable of satisfaction and that Condition has not been waived in accordance with clause 3.6 within 5 Business Days after the other party is given a notice under clauses 3.5(b)(ii) or 3.5(e) of the occurrence of the fact, matter or circumstance which caused that Condition to become incapable of satisfaction and no alternative solution has been agreed under clause 3.5;
- (b) if any Condition has not been satisfied or waived in accordance with clause 3.6 before the End Date; or
- (c) if any Condition, having been satisfied on or before the End Date ceases to be satisfied before the Effective Date,

except where the relevant Condition has become incapable of satisfaction, has not been satisfied, or ceases to be satisfied, as a direct result of a failure by the party seeking to terminate to comply with its obligations under clauses 3.2, 3.3 or 3.4.

### 3.8 Adjournment of Scheme Meeting

- (a) Despite any provision to the contrary in this agreement, if:
  - (i) on or following 5.00 pm on the day which is 5 Business Days before the date on which the Scheme Meeting has been scheduled to be held any of the Conditions in clauses 3.1(a) (*Amending Regulation or Amending Act*), 3.1(b) (*Ministerial approval*), 3.1(c) (*FIRB approval*), 3.1(d) (*ASIC consents*), 3.1(e) (*MAS approvals*), 3.1(f) (*no restraint*), and

3.1(p) (*other Regulatory Approvals*) have not been satisfied or, where possible, waived in accordance with clause 3.6; or

- (ii) any of the Bidder Special Resolutions has not been passed at the same meeting as the Bidder Shareholder Resolutions,

Target may (acting reasonably), or Bidder may (acting reasonably) request Target to, take one or more of the steps set out in clause 3.8(b).

- (b) If any of the events referred to in clause 3.8(a) occur, Target may or Bidder may request Target to:
  - (i) apply to the Court for an order adjourning, postponing, or otherwise delaying the holding of the Scheme Meeting;
  - (ii) apply to the Court for orders cancelling the Scheme Meeting and arrange for the convening of a new scheme meeting for the purposes of approving the Scheme (including as amended);
  - (iii) hold the Scheme Meeting in accordance with the order of the Court pursuant to section 411(1) of the Corporations Act and, following the opening of the meeting, adjourn such meeting before a vote of the Scheme Shareholders is taken on the Scheme (including as amended); or
  - (iv) seek an adjournment of the hearing of the application to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme (including as amended).
- (c) If Bidder requests Target to take one or more of the steps in clause 3.8(b):
  - (i) Target must consider taking such steps, and will consult with Bidder in relation to the request, in good faith; and
  - (ii) without prejudice to Target's other obligations under this agreement, decide whether to comply with Bidder's request by reference to the best interests of Target shareholders.
- (d) Bidder must provide all assistance reasonably required by Target in connection with such steps, provided that in no event will any party be permitted or required to make or seek such an adjournment or postponement of the Scheme Meeting pursuant to this clause 3.8 to a date, if the adjournment or postponement to that date would have the effect that the Scheme could not become Effective by the End Date.
- (e) Despite any other provision in this agreement, if an adjournment is sought with respect to the hearing of the application to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme, the date on which this adjournment is sought or obtained is not the Second Court Date.
- (f) Subject to Target's obligations under clauses 3.2, 3.3 and 3.4, nothing in this clause 3.8 restricts Target's ability to take any one or more of the steps in clause 3.8(b), or do any other act, otherwise than pursuant to this clause.

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## 4. Scheme Consideration

### 4.1 Scheme Consideration

Subject to the Scheme becoming Effective and clause 4.2(a), Bidder covenants and agrees in favour of Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that in consideration of the transfer to Bidder (or its Subsidiary) of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Bidder will:

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

### 4.2 Ineligible Foreign Shareholders

- (a) Bidder (or its Subsidiary) will be under no obligation under the Scheme to provide, and will not provide, any New Bidder Shares whether or not in the form of CDIs to an Ineligible Foreign Shareholder, and instead:
  - (i) Bidder must on or before the Implementation Date issue the New Bidder Shares, some or all of which may be in the form of CDIs, which would otherwise be required to be provided to the Ineligible Foreign Shareholders under the Scheme to the Sale Agent;
  - (ii) Bidder must procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent, in consultation with Bidder and Target, sells or procures the sale or sales, in the ordinary course of trading on ASX or SGX as considered appropriate by the Sale Agent, of all the New Bidder Shares in the form of CDIs or shares, as appropriate, issued to the Sale Agent and remits to Bidder the proceeds of sale in such currency as Bidder and Target agree (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (the Proceeds); and
  - (iii) Bidder (or its Subsidiary) must pay, or procure the payment of, to each Ineligible Foreign Shareholder the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

$$A = [(B \div C) \times D] + E$$

where

B = the number of New Bidder Shares in the form of CDIs that would have been issued to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder; and

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

D = the Proceeds (as defined in clause 4.2(a)(ii) above); and



E = the cash component of the Scheme Consideration payable to that Ineligible Foreign Shareholder in accordance with the terms of the Scheme.

- (b) None of Bidder, Target, or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares (whether in the form of CDIs or not) described in paragraph 4.2(a)(ii) above. The sale of the New Bidder Shares in under this clause 4.2 will be at the risk of the Ineligible Foreign Shareholder.
- (c) Bidder agrees to appoint the Sale Agent prior to the First Court Hearing. The identity and terms, and conditions of appointment, of the Sale Agent are subject to Target's prior approval, acting reasonably.

#### 4.3 Fractional entitlements and share splitting

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration:

- (i) comprising New Bidder Shares in the form of CDIs is such that a fractional entitlement to a Bidder Share arises; or
- (ii) comprising cash is such that a fractional entitlement to a cent arises,

then the entitlement of that Scheme Shareholder to New Bidder Shares in the form of CDIs or cash (as applicable) must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of New Bidder Shares in the form of CDIs or cents (as applicable), and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of New Bidder Shares or in the form of CDIs or cents (as applicable).

- (b) If Bidder and Target are of the opinion (formed reasonably) that two or more Scheme Shareholders have, before the Record Date, been party to share splitting in an attempt to obtain advantage by reference to the rounding provided for in the calculation of each Scheme Shareholders entitlement to the Scheme Consideration referred to in clause 4.1 or the rounding referred to in clause 4.3(a), Bidder and Target may give notice to those Scheme Shareholders:

- (i) setting out their names and registered addresses as shown in the Target Share Register;
- (ii) stating that opinion; and
- (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no Scheme Shares. Bidder, in complying with the provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

#### 4.4 Provision of Target Share information

- (a) In order to facilitate the issue of New Bidder Shares in the form of CDIs, Target must provide, or procure the provision of, to Bidder a complete copy of the Target Share Register as at the Record Date (which must include the name, address and registered holding of each Scheme Shareholder as at the Record Date), within two Business Days after the Record Date.
- (b) The details and information to be provided under clause 4.4(a) must be provided in such form as Bidder, its Representatives or the Bidder Share Registry may reasonably require.

#### 4.5 New Bidder Shares

Bidder covenants in favour of Target (in its own right and on behalf of each Scheme Shareholder) that:

- (a) the New Bidder Shares issued pursuant to the Scheme will, on their issue, rank equally in all respects with all other Bidder Shares;
- (b) the New Bidder Shares will have the right to participate in Bidder dividends with a record date on or after the Implementation Date;
- (c) it will use best endeavours to ensure that Bidder will be admitted to the ASX, and the New Bidder Shares issued pursuant to the Scheme will be quoted for trading on the SGX and the New Bidder Shares in the form of CDIs will be quoted for trading on the ASX, with effect from the Business Day after the Effective Date (or such later date as MAS or ASIC may require), initially on a deferred settlement basis (subject to the approval of the MAS and ASIC) and, with effect from the Business Day following the Implementation Date, on an ordinary (T+3) settlement basis; and
- (d) each New Bidder Share will be issued as fully paid and free from any Encumbrance.

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### 5. Implementation of Scheme

#### 5.1 Target obligations

Target must take all steps reasonably necessary to implement the Scheme as soon as is reasonably practicable after the date of this agreement and so as to complete the Transaction substantially in accordance with the Timetable, and in particular Target must:

- (a) **(Explanatory Memorandum)** as soon as practicable after the date of this agreement, prepare the Explanatory Memorandum (excluding Bidder Information) in accordance with the requirements of the Corporations Act and the Regulatory Guides;
- (b) **(Bidder Shareholders' Circular and Bidder Disclosure Documentation)** as soon as reasonably practicable after request for the specified Target Information, provide the Target Information to Bidder for inclusion in the Bidder Shareholders' Circular and the Bidder Disclosure Documentation and all assistance and information reasonably requested by the Bidder Group's reporting accountants, financial advisers and any other experts to enable them to prepare their respective reports for inclusion in the Shareholders' Circular and the Bidder Disclosure Documentation;
- (c) **(Approval of Target Information)** as soon as reasonably practicable after receipt from Bidder of the draft of the Bidder Shareholders' Circular and/or the Bidder

Disclosure Documentation (as the case may be) provided in accordance with clause 5.2(b), either:

- (i) confirm in writing to Bidder that the Target Information (other than to the extent it consists of information relating to Bidder that was provided by or on behalf of Bidder) in the form and context in which it appears in the draft of the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to Bidder the changes required to ensure that the Target Information (other than to the extent it consists of information relating to Bidder that was provided by or on behalf of Bidder) in the form and context in which it appears in the draft of the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) is not misleading or deceptive in any material respect and does not contain any material omission;
- (d) **(Keep Bidder informed)** promptly inform Bidder if it becomes aware, from the date of the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) until the meeting is held or the securities are issued to which the relevant document relates (as appropriate), that the Target Information (other than to the extent that it consists of information relating to Bidder that was provided by or on behalf of Bidder) in the form and context in which it appears in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) is or has become misleading or deceptive in any material respect or contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
- (e) **(Comments on Explanatory Memorandum)** provide drafts of the Explanatory Memorandum to Bidder and provide Bidder and its Representatives with a reasonable opportunity to provide comments on those drafts before the draft Explanatory Memorandum is provided to ASIC under clause 5.1(i) and Target must consider in good faith when preparing a revised draft of the Explanatory Memorandum any such comments from Bidder and its Representatives;
- (f) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum;
- (g) **(Investigating accountant)** jointly (with Bidder) appoint the investigating accountant and provide all assistance and information reasonably requested by the investigating accountant in connection with the preparation of the investigating accountant's report for inclusion in the Explanatory Memorandum;
- (h) **(Approval of draft Explanatory Memorandum)** procure that a meeting of the Target Board is convened to approve the draft Explanatory Memorandum to be provided to ASIC for its review;

- (i) **(ASIC review)** as soon as reasonably practicable but no later than 18 days before the First Court Date provide an advanced draft of the Explanatory Memorandum to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder, and (to the extent reasonably practicable):
- (i) keep Bidder reasonably informed of any material matters raised by ASIC in relation to the Explanatory Memorandum (and of any resolution of those matters), and use all reasonable endeavours to resolve any such matters; and
  - (ii) to the extent that Target is itself unable to resolve any matters raised by ASIC in relation to the Explanatory Memorandum or a matter is raised by ASIC in relation to the Explanatory Memorandum which concerns the Bidder Information, allow Bidder to participate in Target meetings and discussions with ASIC;
- (j) **(Section 411(17)(b) statement)** apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (k) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (l) **(Representation of Bidder)** allow, and not oppose, any application by Bidder for leave of the Court to be represented, or the separate representation of Bidder by counsel, at the Court hearings held for the purposes of sections 411(1) and 411(4)(b) in relation to the Scheme;
- (m) **(Approval of Explanatory Memorandum)** procure that a meeting of the Target Board is convened to approve the Explanatory Memorandum for registration with ASIC and despatch to Target Shareholders;
- (n) **(Register Explanatory Memorandum)** request to ASIC that the explanatory statement included in the Explanatory Memorandum in relation to the Scheme be registered in accordance with section 412(6) of the Corporations Act;
- (o) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Explanatory Memorandum to Target Shareholders and convening and holding the Scheme Meeting;
- (p) **(Update Explanatory Memorandum)** if it becomes aware of information after the date of despatch of the Explanatory Memorandum, which is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable:
- (i) inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law; and
  - (ii) to the extent it is reasonably practicable to do so, provide Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 5.1(p) and consider in good faith (for the purposes of amending those drafts) any comments received in a timely manner from Bidder and its Representatives on those drafts;

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- (q) **(Keep informed)** from the First Court Date until the Implementation Date, promptly inform Bidder if it becomes aware that the Explanatory Memorandum contains a statement which is misleading or deceptive in a material respect or contains a material omission;
  - (r) **(Shareholder communications)** cooperate and work with Bidder in good faith to ensure that there is effective communication with all Target Shareholders in relation to the Transaction, including without limitation:
    - (i) developing and implementing an agreed communications program to explain all aspects of the Transaction, including the merits of the Transaction, to Target Shareholders;
    - (ii) consulting with the Bidder in relation to the contents of all communications and advertisements issued to Target Shareholders in relation to the Transaction; and
    - (iii) agreeing with Bidder a proxy solicitation process to be undertaken jointly by Bidder and Target in respect of Target Shareholders.
  - (s) **(ASX listing)** use its best endeavours to ensure that Target continues to be admitted to the ASX, and that the Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Implementation Date;
  - (t) **(SGX declarations)** use its reasonable endeavours to procure that its directors, controlling shareholders, and executive officers (including officers occupying a managerial position and above who is a relative of any director, controlling shareholder or executive officer) execute and deliver all declarations required by the SGX Listing Manual;
  - (u) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme; and
  - (v) **(Implementation of Scheme)** if the Scheme is approved by the Court:
    - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act within one Business Day after such office copy is received (or such later date as is agreed between the parties in writing);
    - (ii) close Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
    - (iii) subject to Bidder paying the Scheme Consideration to Scheme Shareholders, promptly register all transfers of Scheme Shares to Bidder in accordance with the Scheme; and
    - (iv) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

## 5.2 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Target to implement the Scheme as soon as is reasonably practicable and so as to complete the Transaction substantially in accordance with the Timetable, and in particular Bidder must:

- (a) **(Bidder Information)** provide to Target the Bidder Information in a form appropriate for inclusion in the Explanatory Memorandum and all assistance and information reasonably requested by Target's reporting accountants, financial advisers and any other experts to enable them to prepare their respective reports for inclusion in the Explanatory Memorandum;
- (b) **(Comments on the Bidder Shareholders' Circular and the Bidder Disclosure Documentation)** provide drafts of the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) to Target and provide Target and its Representatives with a reasonable opportunity to provide comments on those drafts before the draft Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) are finalised, and Bidder must consider in good faith when preparing a revised draft of the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) any such comments from Target and its Representatives;
- (c) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Explanatory Memorandum;
- (d) **(Investigating accountant)** jointly (with Target) appoint the investigating accountant and provide all assistance and information reasonably requested by the investigating accountant in connection with the preparation of the investigating accountant's report for inclusion in the Explanatory Memorandum;
- (e) **(Review of Explanatory Memorandum)** as soon as reasonably practicable after receipt from Target of a draft of the Explanatory Memorandum in accordance with clause 5.1(e), review the draft prepared by Target and provide written comments on that draft in good faith;
- (f) **(Approval of Bidder Information)** as soon as reasonably practicable after receipt from Target of the draft of the Explanatory Memorandum provided in accordance with clause 5.1(e), either:
  - (i) confirm in writing to Target that the Bidder Information (other than to the extent it consists of information relating to Target that was provided by or on behalf of Target) in the form and context in which it appears in the draft of the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission and is in a form appropriate for despatch to the Target Shareholders (subject to the approval of the Court); or
  - (ii) provide to Target the changes required to ensure that the Bidder Information (other than to the extent it consists of information relating to Target that was provided by or on behalf of Target) in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission and is in a form appropriate for despatch to the Target Shareholders (subject to the approval of the Court);

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- (g) **(Keep Target informed)** promptly inform Target if it becomes aware from the First Court Date until the Implementation Date that the Bidder Information (other than to the extent that it consists of information relating to Target that was provided by or on behalf of Target) in the form and context in which it appears in the Explanatory Memorandum is or has become misleading or deceptive in any material respect or contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
  - (h) **(Target's liaisons with ASIC)** to the extent that Bidder is permitted to participate in Target's liaisons with ASIC under clause 5.1(i), promptly and in good faith provide to Target all information reasonably required by ASIC or Target, as the case may be, in writing and in a form appropriate for consideration by ASIC and, where appropriate, inclusion in the Explanatory Memorandum;
  - (i) **(Provide comments)** to the extent that Bidder is provided with draft documents under clause 5.1(p), promptly and in good faith provide all comments regarding those draft documents to Target in writing and in a form appropriate for inclusion in such draft document;
  - (j) **(Approval of Bidder Shareholder's Circular)** procure that a meeting of the Bidder Board be convened to approve the draft Bidder Shareholder's Circular and despatch it to holders of Bidder Shares;
  - (k) **(Approval of Bidder's Shareholders)** procure the convening of a shareholders' meeting of Bidder to be held at least 14 days before the last time for lodgement of proxies for the Scheme Meeting to consider and pass the Bidder Shareholder Resolutions;
  - (l) **(Deed Poll)** prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to Target;
  - (m) **(Official quotation)** apply to ASIC for official quotation on ASX of the CDIs to be issued to Scheme Shareholders pursuant to the Scheme and use its best endeavours to obtain approval for official quotation on the ASX as an ASX listing (subject to customary conditions and to the Scheme becoming Effective) no later than 8.00 am on the Second Court Date;
  - (n) **(Second Court Hearing)** procure that it is represented by counsel at the Court hearing convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme; and
  - (o) **(Implementation of Scheme)** if the Scheme becomes Effective:
    - (i) provide the Scheme Consideration on the Implementation Date in accordance with clause 4 (*Scheme Consideration*) and the terms of the Scheme;
    - (ii) ensure that holding statements are despatched to Scheme Shareholders for the New Bidder Shares in the form of CDIs issued to those Scheme Shareholders pursuant to the Scheme by midday on the Implementation Date; and

- (iii) promptly do all other things contemplated by or necessary to give effect to the Scheme, the Deed Poll and the orders of the Court approving the Scheme.

### **5.3 Reconstitution of Target Board**

As soon as practicable after implementation of the Scheme, Target will use its reasonable endeavours to cause the appointment to the Target Board and to the boards of each Subsidiary of Target of such number of persons as nominated by Bidder and take any other action necessary to give effect to the composition of each of these boards agreed between Bidder and Target, subject to those persons being appointed having provided a consent to act as directors of the relevant companies and to any necessary consents from Australian Regulatory Authorities to their appointments having been obtained.

### **5.4 Bidder Board appointments**

As soon as practicable after implementation of the Scheme, Bidder will use its reasonable endeavours to cause the appointment to the Bidder Board of 4 persons nominated by Target, subject to the prior consent of the MAS, and to those persons having provided a consent to act as a director of Bidder, and in accordance with Bidder's articles of association.

### **5.5 Removal of Target from official list of ASX**

If directed by Bidder, Target must take all steps necessary for Target to be removed from the official list of ASX on the day immediately following the Implementation Date, including lodging a request for removal with ASIC prior to the Implementation Date and Target and/or Bidder satisfying any conditions reasonably required by ASIC for it to act on that request.

### **5.6 Responsibility statement**

The Explanatory Memorandum will contain a responsibility statement to the effect that:

- (a) Bidder is responsible for the Bidder Information (other than any information provided by Target to Bidder or obtained from announcements made by Target to the ASX regarding the Target Group contained in, or used in the preparation of, the information regarding the merged Bidder Group following implementation of the Scheme) contained in the Explanatory Memorandum; and
- (b) Target is responsible for the Target Information contained in the Explanatory Memorandum and is also responsible for the information contained in the Explanatory Memorandum provided by Target to Bidder or obtained from Target's announcements to the ASX regarding the Target Group contained in, or used in the preparation of, the information regarding the merged Bidder Group following the implementation of the Scheme.

### **5.7 Responsibility statement for Bidder documents**

- (a) Each of the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) will contain a responsibility statement to the effect that Bidder is responsible for the Bidder Information (other than any information provided by Target to Bidder or obtained from announcements made by Target to the ASX regarding the Target Group contained in, or used in the preparation of, the information regarding the merged Bidder Group following implementation of the Scheme) contained in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be);



- (b) The Bidder Shareholders' Circular will contain a responsibility statement to the effect that Target is responsible for Target Information contained in it.

## **5.8 Target performance rights**

Target must use all reasonable endeavours to procure by no later than 5 Business Days prior to the Scheme Meeting, that each holder of a performance right granted by Target has been either transferred or issued the Target Shares to which their performance rights entitle them.

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

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

From the date of this agreement up to and including the Implementation Date, Target must:

- (a) procure that each member of the Target Group:
- (i) conducts its businesses and operations in the ordinary and usual course and substantially consistent (subject to any applicable laws, regulations and licence conditions) with the manner in which each such business and operation is conducted prior to the date of this agreement;
  - (ii) conducts its businesses and operations in accordance with all applicable laws and regulations;
  - (iii) preserves its relationships with customers, suppliers, landlords, licensors, licensees, joint venturers and others having business dealings with it;
  - (iv) protects and maintains each of its physical assets and must maintain appropriate and adequate insurance in respect of each of those assets which are insurable;
  - (v) keeps and maintains proper records of all its dealings and transactions relating to its business and operations;
  - (vi) pays all amounts owing to trade or other creditors of the entity in accordance with applicable payment terms; and

- (b) ensure that no Target Prescribed Occurrence occurs,

except in relation to any matter required to be done or procured by Target or another member of the Target Group pursuant to, or which is otherwise expressly permitted by, the Transaction Documents, or the undertaking of which Bidder has approved in writing, such approval not to be unreasonably withheld or delayed.

For the avoidance of doubt, nothing in this clause 6.1 restricts the ability of Target to respond to a Competing Proposal in accordance with its obligations under clauses 7 and 8.

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

- (a) From the date of this agreement up to and including the Implementation Date, Bidder must:

- (i) procure that each member of the Bidder Group:
- A. conducts its businesses and operations in the ordinary and usual course and substantially consistent (subject to any

applicable laws, regulations and licence conditions) with the manner in which each such business and operation is conducted prior to the date of this agreement; and

B. conducts its business and operations in accordance with all applicable laws and regulations; and

(ii) ensure that no Bidder Prescribed Occurrence occurs,

except in relation to any matter required to be done or procured by Bidder or another member of the Bidder Group pursuant to, or which is otherwise expressly contemplated by, the Transaction Documents or the Funding of the Scheme Consideration, or the undertaking of which Target has approved in writing, such approval not to be unreasonably withheld or delayed.

(b) Bidder must use reasonable efforts to finalise the terms of the Funding of the Scheme Consideration as soon as practicable and so as not to affect the completion of the Transaction substantially in accordance with the Timetable.

### 6.3 Requests for access

From the date of this agreement to the Implementation Date, Target will in good faith, on request from Bidder, provide to Bidder reasonable access at reasonable times, to:

(a) members of Target Executive Committee and to such other personnel as are reasonably approved by the Target Executive Committee; and

(b) records and premises of Target Group, unless the provision of any such access is prohibited by law.

### 6.4 Change in control rights

(a) Target will identify any change in control or similar provision (**Change in Control Provision**) which:

(i) is contained in any lease or other contract to which any member of the Target Group is a party and which:

A. requires or would be likely to result in expenditure by a member of the Target Group (either alone or together with any other members of the Target Group) of \$20,000,000 or more in any year; or

B. is otherwise in the opinion of Target, having consulted with Bidder, material to the business or operations of the Target Group as a whole,

(**Material Contract**); and

(ii) will, as a result of the announcement or implementation of the Scheme or Transaction, give any other party (**Counterparty**) to the Material Contract the entitlement to exercise a right to terminate or modify that lease or contract (**Triggered Right**).

(b) Target, in cooperation and consultation with Bidder, will endeavour to obtain within a reasonable time, any consents or waivers required from each Counterparty in respect of each Change in Control Provision to ensure that the relevant

Counterparty cannot exercise any Triggered Right where, in each case, such consent or waiver is unconditional or subject only to conditions acceptable to Bidder (acting reasonably).

- (c) Bidder must cooperate with and provide all assistance and information reasonably requested by Target for the purposes of obtaining the consents and waivers referred to in clause 6.4(b).
- (d) For the avoidance of doubt, a failure by Bidder to accept a conditional consent or waiver by a Counterparty procured in accordance with clause 6.4(b), prevents Bidder from asserting a breach of this clause 6.4 by Target with respect to the corresponding Triggered Right.

## 6.5 Integration Committee

Promptly following the execution of this agreement, Bidder and Target shall establish an operational integration committee (**Integration Committee**) consisting of members of the management team of each of Bidder and Target and such other persons as the managing directors may agree from time to time for the purpose of facilitating and planning for the merger and integration of the businesses of the Target Group with the businesses of the Bidder Group following the Implementation Date. Both Bidder and Target undertake to commit all reasonable resources and personnel to assist the Integration Committee and the integration activities that the Integration Committee decides to undertake.

## 6.6 Financing

- (a) Target must provide Bidder, Bidder's Representatives and Bidder's prospective financing sources with reasonable access to members of the Target Executive Committee and to such other personnel as are reasonably approved by the Target Executive Committee and, subject to any confidentiality obligations owed to third parties as at the date of this agreement, permit Bidder to provide Bidder's prospective financing sources with information which Bidder has obtained from Target under the terms of this agreement that is necessary to enter into or consummate the Funding of the Scheme Consideration. If information regarding Target cannot be disclosed because of existing confidentiality obligations owed to a third party, Target must, if requested in writing by Bidder, use its reasonable endeavours to seek permission from the third party to disclose the information to Bidder, Bidder's Representatives and Bidder's prospective financing sources.
- (b) Target must provide such cooperation as may be reasonably requested by Bidder in for the purposes of the Funding of the Scheme Consideration, including subject to receipt of reasonable notice and availability beyond duties of their roles in the ordinary or appropriate course of Target Group activities, the Target Executive Committee participating in such number of meetings, presentations, road shows, and sessions with prospective financing sources, investors and rating agencies as are reasonably necessary for the consummation of such financing.

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## 7. Recommendation, intentions and announcements

### 7.1 Bidder Board recommendation

Bidder must procure that the Bidder Board, in the Announcement and in the Bidder Shareholder's Circular, unanimously recommends to its shareholders that they vote in favour of the Bidder Shareholder Resolutions, and maintains that recommendation, unless a majority of the Bidder Directors determine, in good faith, and after taking advice from their external

financial and legal advisers, that their fiduciary or statutory duties require them to change or withdraw that recommendation.

## **7.2 Bidder Director intentions**

Bidder must use its best endeavours to procure that each Bidder Director announces in the Announcement and in the Bidder Shareholder's Circular his or her intention to vote in favour of the Bidder Shareholder Resolutions in respect of any Bidder Shares of which they are the legal or beneficial owner and in respect of which they have power to vote, and maintains that intention, unless a majority of the Bidder Directors determine, in good faith, and after taking advice from their external financial and legal advisers, that their fiduciary or statutory duties require them to change that intention.

## **7.3 Target Board recommendation**

Target must procure that the Target Board, in the Announcement and in the Explanatory Memorandum, unanimously recommends that Target Shareholders vote in favour of the Scheme subject to:

- (a) no Superior Proposal being made; and
- (b) the Independent Expert concluding that the Scheme is in the best interests of the Target Shareholders.

## **7.4 Target Director intentions**

Target must use its best endeavours to procure that each Target Director announces in the Announcement and in the Explanatory Memorandum his or her intention to vote in favour of the Scheme any Target Shares in which they have a Relevant Interest and in respect of which they have power to vote subject to:

- (a) no Superior Proposal being made; and
- (b) the Independent Expert concluding that the Scheme is in the best interests of the Target Shareholders.

## **7.5 Change of recommendation or intentions**

Target must procure that the Target Board does not change its recommendation and use its best endeavours to procure that no Target Director announces his or her intention to vote any Target Shares in which they have a Relevant Interest against the Scheme or to abstain from voting on the Scheme unless:

- (a) either:
  - (i) a Superior Proposal is made and Target has not breached its obligations under clause 8 (*Exclusivity arrangements*); or
  - (ii) a majority of Target Directors otherwise determine, in good faith, that their fiduciary or statutory duties require them to do so after having taken advice from their legal and external financial advisers;

and Target has notified Bidder that a majority of its directors intends to change, withdraw or modify their recommendation in relation to the Scheme and five clear Business Days has passed since that notification is given; or

- (b) the Independent Expert:
- (i) does not conclude that the Scheme is in the best interests of Target Shareholders; or
  - (ii) having concluded that the Scheme is in the best interests of Target Shareholders, withdraws or changes that conclusion.

## **7.6 Announcements**

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

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## **8. Exclusivity arrangements**

### **8.1 No shop**

During the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, directly or indirectly solicit, initiate or encourage any Competing Proposal or any inquiry, expression of interest, offer, proposal, negotiations or discussions by or with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

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

During the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, directly or indirectly:

- (a) enter into, continue or participate in any negotiations or discussions with, or accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal; or
- (b) make available to any Third Party, or permit any Third Party to receive, any non-public information relating to any member of the Target Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal,

unless (in either case) and only to the extent that and for so long as the Target Board determines, in good faith, after taking advice from the Target Board's legal and external financial advisors, that their fiduciary or statutory duties require them to do so.

### **8.3 Warranty and undertakings in relation to access to information**

Target represents and warrants as at the date of this agreement:

- (a) that it has, and its Representatives have, ceased any existing negotiations or discussions with any party, and it is not, and its Representatives are not, in any negotiations or discussions with any party, which may reasonably be expected to lead to a Competing Proposal; and
- (b) that it has requested or will request the return of Target's confidential information in accordance with the terms of any relevant confidentiality agreement from all Third Parties conducting due diligence investigations on the Target Group prior to the date of this agreement.

## 8.4 Payment of costs

- (a) Target and Bidder believe that the Scheme and the Transaction will provide benefits to Target and Bidder and their respective shareholders, and acknowledge that if the parties enter into this agreement and the Scheme and the Transaction are subsequently not implemented, Bidder will incur significant costs.
- (b) In the circumstances referred to in clause 8.4(a):
  - (i) Bidder requested that provision be made for the Target Break Fee, without which it would not have entered into this agreement; and
  - (ii) the Target Board believes that it is appropriate to agree to the Target Break Fee in order to secure Bidder's participation.
- (c) Target and Bidder acknowledge that the Target Break Fee is intended by the parties to be purely and strictly compensatory in nature and represents a reasonable estimate of the compensation so as to compensate Bidder for the following:
  - (i) advisory costs (including costs of advisors)
  - (ii) financing costs;
  - (iii) costs of management and directors' time;
  - (iv) out of pocket expenses; and
  - (v) reasonable opportunity costs in pursuing the Transaction or not pursuing other alternative acquisitions or strategic initiatives.

## 8.5 Target Break Fee payable

- (a) Subject to clause 8.6, Target must pay Bidder the Target Break Fee, without withholding or set off, in the following circumstances:
  - (i) if a Superior Proposal is announced prior to:
    - A. the date of the Scheme Meeting; or
    - B. if the Scheme Meeting is adjourned in accordance with clause 3.8, the date on which Scheme Shareholders vote on the resolution considered at the Scheme Meeting; or
    - C. if the Scheme Meeting is never held, the date on which this agreement is terminated;
  - (ii) if a Competing Proposal of the type in paragraphs (b) or (c) of the definition of that term is announced before the date on which this agreement is terminated and consummated by the End Date;
  - (iii) if a majority of Target Directors change, withdraw or modify their recommendation of the Scheme or recommend, support or endorse a Competing Proposal before this agreement is terminated, except where either or both of:
    - A. the Independent Expert concludes (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders; and

B. the Target Directors change, withdraw or modify their recommendation by reference to any of

the trading price of Bidder Shares on SGX or

a sustained deterioration in the value of the Scheme Consideration, after the date of this agreement, having determined in good faith to do so, after taking advice from their legal and external financial advisers that their fiduciary or statutory duties require them to do so, after having given Bidder notice as required by clause 7.5(a) where, in the five clear Business Days after such notice was given, Bidder has not proposed an increase to the Scheme Consideration as a consequence of which the majority of the Target Directors no longer propose to change, withdraw or modify their recommendation of the Transaction;

(iv) Target is in material breach of this agreement (and if the breach is a breach of a clause referred to in clause 13.2(b)(i) the circumstances giving rise to the breach have not been remedied by the end of the period specified in clause 13.2(b)(i)) and Bidder terminates this agreement as a result.

(b) For the avoidance of doubt, none of subparagraphs 8.5(a)(i) to 8.5(a)(iv) prevent Bidder from demanding the Target Break Fee pursuant to any other subparagraph of clause 8.5(a) if one or more of those subparagraphs is satisfied.

(c) Target must pay Bidder the Target Break Fee without withholding or set off within 2 Business Days of receiving a written demand from Bidder for payment of the Target Break Fee made after the occurrence of an event referred to in clause 8.5(a).

## 8.6 Target Break Fee not payable

Despite any other term of this agreement:

(a) the Target Break Fee will not be payable to Bidder if the Scheme becomes Effective; and

(b) the Target Break Fee is only payable once.

## 8.7 Compliance with law

If a court or the Takeovers Panel determines that any part of the Target Break Fee:

(a) constitutes, or would if performed constitute:

(i) a breach of the fiduciary or statutory duties of the Target Board; or

(ii) unacceptable circumstances within the meaning of the Corporations Act; or

(b) would, if paid, be unlawful for any reason,

then Target will not be obliged to pay such part of the Target Break Fee and, if the Target Break Fee has already been paid, then Bidder must within 5 Business Days after receiving written demand from Target refund that part of the Target Break Fee to Target.

## 8.8 Other claims

Target will have no liability of any kind for any breach of this agreement that arises out of or relates to an event or occurrence referred to in clause 8.5 other than for its liability to reimburse Bidder for its costs under clause 8.5 (where that clause applies).

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## 9. Bidder Break Fee

### 9.1 Payment of costs

- (a) Target and Bidder believe that the Scheme and the Transaction will provide benefits to Target and Bidder and their respective shareholders, and acknowledge that if the parties enter into this agreement and the Scheme and the Transaction are subsequently not implemented, Target will incur significant costs.
- (b) In the circumstances referred to in clause 9.1(a):
  - (i) Target requested that provision be made for the Bidder Break Fee, without which it would not have entered into this agreement; and
  - (ii) the Bidder Board believes that it is appropriate to agree to the Bidder Break Fee in order to secure Target's participation.
- (c) Target and Bidder acknowledge that the Bidder Break Fee is intended by the parties to be purely and strictly compensatory in nature and represents a reasonable estimate of the compensation so as to compensate Target for the following:
  - (i) advisory costs (including costs of advisors);
  - (ii) costs of management and directors' time;
  - (iii) out of pocket expenses; and
  - (iv) reasonable opportunity costs in pursuing the Transaction or not pursuing other alternative acquisitions or strategic initiatives.

### 9.2 Bidder Break Fee payable

- (a) Subject to clause 9.3, Bidder must pay Target the Bidder Break Fee, without withholding or set off, in the following circumstances:
  - (i) if a majority of Bidder Directors change their recommendation of the Bidder Shareholder Resolutions before this agreement is terminated; or
  - (ii) if Bidder is in material breach of this agreement (and if the breach is a breach of a clause referred to in clause 13.3(b)(i) the circumstances giving rise to the breach have not been remedied by the end of the period specified in clause 13.3(b)(i)) and Target terminates this agreement as a result.
- (b) For the avoidance of doubt, none of subparagraphs 9.2(a)(i) and 9.2(a)(ii) prevent Target from demanding the Bidder Break Fee pursuant to any other subparagraph of clause 9.2(a) if one or more of those subparagraphs is satisfied.
- (c) Bidder must pay Target the Bidder Break Fee without withholding or set off within 2 Business Days of receiving a written demand from Target for payment of the Bidder Break Fee made after the occurrence of an event referred to in clause 9.2(a).



### **9.3 Bidder Break Fee not payable**

Despite any other term of this agreement:

- (a) the Bidder Break Fee will not be payable to Target if the Scheme becomes Effective; and
- (b) the Bidder Break Fee is only payable once.

### **9.4 Compliance with law**

If a court determines that any part of the Bidder Break Fee:

- (a) constitutes, or would if performed constitute a breach of the fiduciary or statutory duties of the Bidder Board; or
- (b) would, if paid, be unlawful for any reason,

then Bidder will not be obliged to pay such part of the Bidder Break Fee and, if the Bidder Break Fee has already been paid, then Target must within 5 Business Days after receiving written demand from Bidder refund that part of the Bidder Break Fee to Bidder.

### **9.5 Other claims**

Bidder will have no liability of any kind for any breach of this agreement that arises out of or relates to an event or occurrence referred to in clause 9.2 other than for its liability to reimburse Target for its costs under clause 9.2 (where that clause applies).

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

### **10.1 Liability of directors and employees**

Each party releases all rights against, and agrees that it will not make any claim against, each past or present director and employee of the other party in relation to information provided to the first party in relation to the transactions contemplated by this agreement to the extent that such director or employee has acted in good faith and has not engaged in wilful misconduct.

### **10.2 Directors' and officers' insurance**

Bidder acknowledges that Target will:

- (a) arrange for the cover provided under the Policy to be extended for a further period of 12 months; and
- (b) by no later than the Implementation Date arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date.

### **10.3 Obligations in relation to directors' and officers' insurance**

From the Implementation Date, Target must not:

- (a) vary or cancel the Policy; or

- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a director or officer of Target under the Policy as extended pursuant to clause 10.2(b) above.

Nothing in clause 10.2 or clause 10.3 shall require Bidder or Target to incur any additional premium after the Implementation Date or require Target to not fulfil its contractual obligations under the Policy.

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## 11. Representations, warranties and indemnities

### 11.1 Representations and warranties by Bidder

Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties):

- (a) on each date from the date of this agreement until (and including) the Second Court Date that:
- (i) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
  - (ii) subject to the satisfaction of the conditions set out in clause 3.1(e) (*MAS approvals*) and clause 3.1(l) (*Bidder Shareholder approval*), the execution and delivery by Bidder of the Transaction Documents to which Bidder is party has, been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
  - (iii) the Transaction Documents to which Bidder is party constitute legal, valid and binding obligations on it and do not conflict with or result in a breach of or default under:
    - A. the constitution or equivalent constituent documents of Bidder or any of its Subsidiaries; or
    - B. any writ, order or injunction, judgment, law, rule or regulation to which Bidder or any of its Subsidiaries is party, or by which Bidder or any of its Subsidiaries is bound; and
  - (iv) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Bidder Group in order for it to execute and perform the Transaction Documents to which it is a party;
- (b) that as at the date of this agreement, there are
- (i) 1,071,150,900 Bidder Shares on issue; and
  - (ii) Options to acquire 502,000 Bidder Shares on issue,

and Bidder has not issued (and is not required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Bidder securities by way of new issue other than under a dividend reinvestment plan (including pursuant to any underwriting of that plan) or an incentive scheme or option or performance share plans for the benefit of employees

and directors only (including any security issued upon conversion, vesting or exercise of rights attaching to any security issued under an incentive scheme, option or performance share plan);

(c) on the First Court Date and the Second Court Date:

- (i) the Bidder Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that Target and its directors, officers and employees have relied on that information for the purposes of considering and approving the Target Information in the Explanatory Memorandum and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
- (ii) the Bidder Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides), and includes all information regarding Bidder, its Subsidiaries and the Bidder Shares that is required by the Corporations Act, Regulatory Guides and Listing Rules to be included in the Explanatory Memorandum, including all the information that would be required under sub-sections 636(1)(c), (f), (g), (h), (i), (k), (l) and (m) of the Corporations Act to be included in a bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid;
- (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of Target, or has been extracted from announcements made by Target to the ASX regarding the Target Group) in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; and
- (iv) Bidder has complied with its obligations under clause 5.2(g);

(d) on the First Court Date and the Second Court Date:

- (i) the Bidder Information has been prepared and included in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) in good faith and on the understanding that Target and its directors, officers and employees have relied on that information for the purposes of considering and approving the Target Information in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be);
- (ii) the Bidder Information complies in all material respects with relevant laws, and includes all information required to be included in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be); and
- (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of Target, or has been extracted from public announcements made by Target to the ASX regarding the Target Group) in the form and context in which it appears in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) is not

misleading or deceptive in any material respect and does not contain any material omission;

- (e) on the date of this agreement, the First Court Date, the Scheme Meeting and the Second Court Date:
- (i) following the making by Bidder of an announcement to SGX pursuant to clause 7.6, Bidder has complied in all respects with its continuous disclosure obligations under Chapter 7 of the SGX Listing Manual and Bidder is not withholding any information from Target which is being withheld from public disclosure in reliance on Rule 703 of the SGX Listing Manual; and
  - (ii) Bidder is not aware of any material information relating to its businesses that has not been disclosed to Target and is objectively necessary for Target to make an informed decision as to whether to proceed with the Scheme; and
- (f) as at the date of this agreement:
- (i) all information that Bidder has provided to Target or its Representatives is not misleading and it has not omitted any information required to make the information provided to Target not misleading (including that there are reasonable grounds for all statements as to future matters and a basis for all statements of opinion in that information); and
  - (ii) Bidder has a reasonable basis to expect that it will be able to agree the Bidder Facility Agreements on final terms that are acceptable having regard to the nature, scope and activities of the business of the Bidder Group and the Target Group and is not aware of any matter which would reasonably lead it to expect that a condition precedent to drawdown under the Bidder Facility will not be fulfilled.

## **11.2 Qualification of Bidder Warranties**

The Bidder Warranties and the indemnity under clause 11.3, are subject to matters which have been fairly disclosed in Bidder's announcements to the SGX regarding the Bidder Group prior to entry into this agreement.

## **11.3 Bidder indemnity**

- (a) Bidder acknowledges that in entering into this agreement Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Bidder indemnifies Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Bidder Warranties.

## 11.4 Representations and warranties by Target

Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties):

- (a) on each date from the date of this agreement until (and including) the Second Court Date:
- (i) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
  - (ii) the execution and delivery by Target of the Transaction Documents to which Target is party has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
  - (iii) the Transaction Documents to which Target is party constitute legal, valid and binding obligations on it and do not conflict with or result in a breach of or default under:
    - A. the constitution or equivalent constituent documents of Target or any of its Subsidiaries; or
    - B. any writ, order or injunction, judgment, law, rule or regulation to which Target or any of its Subsidiaries is party, or by which Target or any of its Subsidiaries is bound; and
  - (iv) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for Target to execute and perform the Transaction Documents to which it is a party;
- (b) that as at the date of this agreement, there are 175,136,729 Target Shares on issue and Target has not issued (and is not required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into Target securities other than in connection with a dividend reinvestment plan;
- (c) on the First Court Date and the Second Court Date:
- (i) the Target Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that Bidder and its directors, officers and employees have relied on that information for the purposes of considering and approving the Bidder Information in the Explanatory Memorandum;
  - (ii) the Target Information in the Explanatory Memorandum does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;
  - (iii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides); and
  - (iv) Target has complied with its obligations under clause 5.1(q);

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- (d) on the First Court Date and the Second Court Date:
    - (i) the Target Information has been prepared and included in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) in good faith and on the understanding that Bidder and its directors, officers and employees have relied on that information for the purposes of considering and approving the Bidder Information in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be);
    - (ii) the Target Information in the Bidder Shareholders' Circular complies in all material respects with applicable laws (including the SGX Listing Manual and the SFA), and includes all information regarding Target, its Subsidiaries and the Target Shares that is required by the SGX Listing Manual and all other applicable laws and regulations to be included in the Bidder Shareholders' Circular;
    - (iii) the Target Information (other than to the extent that it consists of information relating to the Bidder Group that was provided by or on behalf of Bidder, or has been extracted from public announcements made by Bidder to SGX regarding the Bidder Group) in the form and context in which it appears in the Bidder Shareholders' Circular and/or the Bidder Disclosure Documentation (as the case may be) is not misleading or deceptive in any material respect and does not contain any material omission; and
    - (iv) Target has complied with its obligations under clause 5.1(d);
  - (e) on the date of this agreement, the First Court Date, the Scheme Meeting and the Second Court Date:
    - (i) following the making by Target of an announcement to the ASX pursuant to clause 7.6, Target has complied in all respects with its continuous disclosure obligations under Listing Rule 3.1 and Target is not withholding any information from Bidder which is being withheld from public disclosure in reliance on Listing Rule 3.1A; and
    - (ii) Target is not aware of any material information relating to any member of the Target Group that has not been disclosed to Bidder and is objectively necessary for Bidder to make an informed decision as to whether to proceed with the Transaction; and
  - (f) as at the date of this agreement, all information that Target has provided to Bidder or its Representatives is not misleading and it has not omitted any information required to make the information provided to Bidder not misleading (including that there are reasonable grounds for all statements as to future matters and a basis for all statements of opinion in that information).

## **11.5 Qualification of Target Warranties**

The Target Warranties and the indemnity under clause 11.6, are subject to matters which have been fairly disclosed in Target's announcements to the ASX regarding the Target Group prior to entry into this agreement.

## **11.6 Target indemnity**

- (a) Target acknowledges that in entering into this agreement Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Target indemnifies Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the Target Warranties.

## **11.7 Notifications**

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 11.

## **11.8 Status of representations and warranties**

Each representation and warranty in this clause 11:

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

## **11.9 Status and enforcement of indemnities**

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

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## **12. Confidentiality and communications**

### **12.1 Confidentiality Agreement**

Bidder and Target acknowledge and agree that they each continue to be bound by the Confidentiality Agreement after the date of this agreement.

### **12.2 Survival of obligations**

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this agreement.

### 12.3 Communications

Except in relation to communications regulated by clause 7.6, and except where such communications are for the purposes of satisfying a Condition (in which case clause 3 shall apply) and to the extent permitted by applicable law:

- (a) the parties must use all reasonable endeavours to consult in good faith with each other on all aspects (including the timing, form, content and manner) of any communications with:
  - (i) any Regulatory Authority, including MAS and ASIC, the Treasurer of the Commonwealth of Australia and any Commonwealth, State or Territory government department or member of parliament;
  - (ii) any rating agency or any other third party (other than its Representatives) including the media; or
  - (iii) the respective employees of the Bidder Group and the Target Group, in relation to the implementation of the Transaction;
- (b) each party must provide copies to the other party of any written communications sent to or received from a person referred to in sub-paragraphs (i), (ii) or (iii) of paragraph (a) promptly upon despatch or receipt (as the case may be), subject to the limitations set out in clauses 3.3(e) and 3.3(f); and
- (c) each party shall have the right to be present and make submissions at or in relation to any proposed meeting with any Regulatory Authority in relation to the Transaction.

### 12.4 Disclosure on termination of agreement

The parties agree that, if this agreement is terminated under clause 13, any party may disclose:

- (a) by way of announcement to any recognised stock or securities exchange on which its shares are quoted the fact that this agreement has been terminated, where such disclosure is required by the relevant listing rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with each other party as to (and gives the other party a reasonable opportunity to comment on) the form of the announcement prior to its disclosure; and
- (b) the fact that this agreement has been terminated to ASIC or MAS, as appropriate.

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## 13. Termination

### 13.1 Limited termination events

This agreement may only be terminated by either party in the circumstances contemplated by clauses 13.2 and 13.3, or if the parties agree in writing to terminate this agreement.

### 13.2 Termination by Bidder

Bidder may terminate this agreement at any time before 8.00 am on the Second Court Date:

- (a) in accordance with clause 3.7; or



- (b) by notice in writing to Target if:
- (i) Target is in material breach of any of clause 3, clause 5.1 or clause 6.1 of this agreement before that time, provided that Bidder is only entitled to terminate if it has given notice to Target setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day one Business Day before the Second Court Date) from the time such notice is received by Target;
  - (ii) Target is in breach of clause 7.3, clause 7.4, clause 7.5 or clause 8 of this agreement;
  - (iii) there is a material breach of any of the Target Warranties;
  - (iv) a Target Prescribed Occurrence occurs;
  - (v) a Target Material Adverse Change occurs; or
  - (vi) if a majority of directors of Target publicly change or withdraw their recommendation in relation to the Scheme or publicly recommend a Competing Proposal, for any reason, whether or not permitted to do so under this agreement.

### 13.3 Termination by Target

Target may terminate this agreement at any time before 8.00 am on the Second Court Date:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to Bidder if:
  - (i) Bidder is in material breach of any of clause 3, clause 5.2 or clause 6.2 of this agreement before that time, provided that Target is only entitled to terminate if it has given notice to Bidder setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day one Business Day before the Second Court Date) from the time such notice is received by Bidder;
  - (ii) Bidder is in breach of clause 7.1, clause 7.2 or clause 9 of this agreement;
  - (iii) a Bidder Prescribed Occurrence occurs;
  - (iv) a Bidder Material Adverse Change occurs;
  - (v) if a majority of the directors of Target publicly change or withdraw their recommendation in relation to the Scheme or publicly recommend a Superior Proposal, and only where such change occurs in accordance with the rights and obligations of Target and the Target Board pursuant to the terms of this agreement; or
  - (vi) there is a material breach of any of the Bidder Warranties.

## 13.4 Effect of termination

If this agreement is terminated:

- (a) the provisions of this agreement shall cease to have effect except for the provisions of clauses 1, 8.4 to 8.8 (inclusive), 9, 10.1, 12, 13.4, and 14 to 16 (inclusive), 17.1 to 17.6 (inclusive), 17.8 to 17.12 (inclusive) and 18 which will survive termination; and
- (b) each party retains the rights it has against the others in respect of any breach of this agreement occurring before termination.

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## 14. Notices

### 14.1 How notice to be given

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

- (a) may be given by personal service, post or facsimile or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
  - (i) if to Target: ASX Limited  
Address: 20 Bridge Street, Sydney NSW 2000  
Fax number: +61 2 9227 0480  
Email address: [company.secretariat@asx.com.au](mailto:company.secretariat@asx.com.au)  
For the attention of: Amanda Harkness  
with a copy in each case to:  
Email: [amanda.harkness@asx.com.au](mailto:amanda.harkness@asx.com.au)
  - (ii) if to Bidder: Singapore Exchange Limited  
Address: 2 Shenton Way, #19-00 SGX Centre 1, Singapore 068804  
Email address: [legal@sgx.com](mailto:legal@sgx.com)  
For the attention of: Mohamed Nasser Bin Ismail
- (d) (in the case of personal service, post or facsimile) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this agreement; and

- (f) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number, or sent by email to the email address, of the addressee, in accordance with this clause 14.1.

## 14.2 When notice taken to be received

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

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery; and
- (e) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 14.1, 24 hours after the email was sent,

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

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## 15. GST

### 15.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 15.1(b), terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) "Input tax credit" has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* and a reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which another member of the same GST group is entitled.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) Any consideration for a supply that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to that supply for the purpose of this clause.

### 15.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost,

expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

### **15.3 GST payable**

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must, subject to clause 15.1(d), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 15.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 15.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 15.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 15.3(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.3(a).

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## **16. Entire agreement**

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

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## **17. General**

### **17.1 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.
- (c) Each party acknowledges and confirms that clauses 17.1(a) and 17.1(b) do not prejudice any rights a party may have in relation to information which has been filed or announced by the other party, or that other party's Related Entities, with ASIC, the ASX, the SGX or the MAS.

## **17.2 Amendments**

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

## **17.3 Assignment**

A party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

## **17.4 Consents**

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

## **17.5 Costs**

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

## **17.6 Counterparts**

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

## **17.7 Further acts and documents**

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

## **17.8 Remedies**

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement. Specific performance, injunctive relief, or any other remedies which would otherwise be available in equity or in law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of any party to terminate this agreement or seek damages for such a breach or threatened breach.

## **17.9 No merger**

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

## **17.10 Severance**

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

## 17.11 Stamp duties

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement;
- (b) must pay to Target on demand the amount of any Indemnified Loss suffered or incurred by Target arising out of or in connection with any failure to comply with clause 17.11(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

## 17.12 Waivers

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

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

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## 18. Governing law, jurisdiction and service of process

### 18.1 Governing law

This agreement is governed by the law applying in New South Wales.

### 18.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.2(a).

### 18.3 Service of process

Bidder irrevocably appoints Mr Rod Halstead of Clayton Utz, or failing him, any other partner of Clayton Utz Sydney Office as its agent in Australia for service of process.

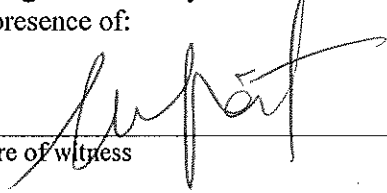
## Schedule 1 Timetable

Event	Date
First Court Date	By the end of February 2011
Bidder Shareholder Meeting	March 2011 (and 16 days prior to Scheme Meeting)
Scheme Meeting	Late March 2011
Second Court Date	April 2011 or as soon as possible after all of the Regulatory Conditions have been satisfied, if later.
Effective Date	On or within 1 Business Day after the Second Court Date.
Implementation Date	2nd quarter 2011.

Executed as an agreement.

Signed for and on behalf of **Singapore Exchange Limited** by its authorised signatory in the presence of:

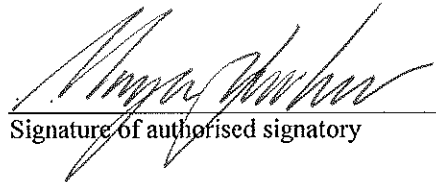
Signature of witness



CHOW SUTAJ

Full name of witness

Signature of authorised signatory



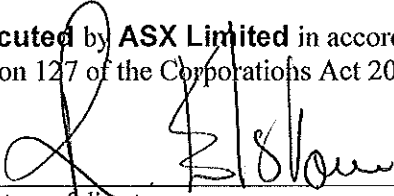
MAGNUS BÖCKER

Full name of authorised signatory

For personal use only



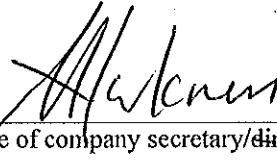
Executed by ASX Limited in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

ROBERT GEORGE ELSTONE

Full name of director



Signature of company secretary/director

AMANDA JANE HARKNESS

Full name of company secretary/director

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**Annexure A Scheme**

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## Scheme of arrangement

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Between the parties

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ASX Limited ABN 98 008 624 691 of Exchange Centre, 20 Bridge Street, Sydney NSW 2000.

(Target)

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

(Scheme Shareholders)

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### 1 Definitions, interpretation and scheme components

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#### 1.1 Definitions

Schedule 1 contains definitions used in this Scheme.

#### 1.2 Interpretation

Schedule 1 contains interpretation rules for this Scheme.

#### 1.3 Scheme components

This Scheme includes any schedule to it.

### 2 Preliminary matters

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- (a) Target is a public company limited by shares, incorporated in ACT and has been admitted to the official list of the ASX. Target Shares are quoted for trading on the ASX.
- (b) As at [insert date] 2011, [175,136,729] Target Shares were on issue.
- (c) Bidder is a listed company limited by shares incorporated in Singapore and is listed on SGX. Bidder Australia is a wholly-owned subsidiary of Bidder.
- (d) If this Scheme becomes Effective:
  - (1) Bidder and Bidder Australia will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
  - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder Australia and Target

will enter the name of Bidder Australia in the Target Share Register in respect of the Scheme Shares.

- (e) Target and Bidder have agreed, by executing the Implementation Agreement, to implement this Scheme.
- (f) This Scheme attributes actions to Bidder and Bidder Australia but does not itself impose an obligation on them to perform those actions. Bidder and Bidder Australia have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including providing or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

### 3 Conditions

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#### 3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until the satisfaction of each of the following conditions :

- (a) all the conditions in clause 3.1 of the Implementation Agreement (other than the condition in clause 3.1(m) of the Implementation Agreement relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Agreement by 8.00am on the Second Court Date;
- (b) neither the Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Target and Bidder;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Target and Bidder; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme coming into effect, pursuant to section 411(10) of the Corporations Act.

#### 3.2 Certificate

- (a) Target and Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

#### 3.3 Lapse of Scheme

The Scheme will lapse and be of no further force or effect if the Implementation Agreement is terminated in accordance with its terms, or if the Scheme does not become Effective by the End Date, or if the conditions referred to in clause 3.1 are not satisfied or, if capable of waiver, waived by the End Date in accordance with the terms of the Implementation Agreement, in which event Target, Bidder and Bidder Australia are each released from:

- (a) any further obligation to take steps to implement this Scheme; and
- (b) any liability with respect to this Scheme.

## 4 Implementation of the Scheme

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### 4.1 Lodgement of Court orders with ASIC

Target will lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving the Scheme as soon as possible and in any event by 5.00pm on the first Business Day after the day on which the Court approves the Scheme. This Scheme will become Effective on and from the date of lodgement of the orders.

### 4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder Australia, without the need for any further act by any Scheme Shareholder (other than acts performed by Target as attorney and agent for Scheme Shareholders under clause 8.5), by:
- (1) Target delivering to Bidder Australia a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Bidder Australia, for registration; and
  - (2) Bidder Australia duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Target for registration; and
- (b) as soon as possible following receipt of the Scheme Transfer in accordance with clause 4.2(a)(2), Target must enter, or procure the entry of, the name of Bidder Australia in the Target Share Register as the registered holder of all the Scheme Shares.

## 5 Scheme Consideration

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### 5.1 Provision of Scheme Consideration

- (a) Bidder and Bidder Australia must, subject to clauses 5.2, 5.3 and 5.4 provide or procure the provision of, the Scheme Consideration to which each Scheme Shareholder is entitled, which is to be satisfied by Bidder:
- (1) in the case of the New Bidder Shares in the form of CDIs, which comprise a component of the Scheme Consideration – by:
    - (A) issuing to CDN to be held on trust that number of New Bidder Shares that will enable CDN to issue CDIs as envisaged by clause 5.1(a)(1)(C) on the Implementation Date;
    - (B) procuring that the name and address of CDN is entered into the Bidder Register in respect of those New Bidder Shares on the Implementation Date and that a share certificate or holding statement (or equivalent document) in the name of CDN representing those New Bidder Shares is sent to CDN;
    - (C) procuring that on the Implementation Date, CDN issues to each such Scheme Shareholder the number of CDIs to which it is entitled under this clause 5 as part of the Scheme Consideration;

- (D) procuring that on the Implementation Date, the name of each such Scheme Shareholder is entered in the records maintained by CDN as the holder of the CDIs issued to that Scheme Shareholder on the Implementation Date;
- (E) in the case of each such Scheme Shareholder who held Scheme Shares on the CHESSE subregister – procuring that the CDIs are held on the CHESSE subregister on the Implementation Date and sending or procuring the sending of a CDI holding statement to the Registered Address of each such Scheme Shareholder within two Business Days after the Implementation Date that sets out the number of CDIs held on the CHESSE subregister by that Scheme Shareholder; and
- (F) in the case of each such Scheme Shareholder who held Scheme Shares on the issuer sponsored subregister – procuring that the CDIs are held on the issuer sponsored subregister on the Implementation Date and sending or procuring the sending of a CDI holding statement to the Registered Address of each such Scheme Shareholder within two Business Days after the Implementation Date that sets out the number of CDIs held on the issuer sponsored subregister by that Scheme Shareholder; and
- (b) in the case of the cash component of the Scheme Consideration –by:
- (1) Bidder or Bidder Australia depositing in cleared funds an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to each Scheme Shareholder, in an Australian dollar denominated trust account operated by Target as trustee for the Scheme Shareholders (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account).
- (2) subject to Bidder and Bidder Australia having complied with clause 5.1(b), Target paying or procuring the payment of the cash component of the Scheme Consideration to each Scheme Shareholder from the trust account referred to in clause 5.1(b), which obligation will be satisfied by Target:
- (A) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Target Share Registrar to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
- (B) otherwise, dispatching, or procuring the dispatch of, a cheque in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2), for the relevant amount.

## 5.2 Joint holders

In the case of Scheme Shares held in joint names, the Scheme Consideration is payable to the joint holders and:

- (a) the New Bidder Shares in the form of CDIs to be issued under this Scheme must be issued to and registered in the names of the joint holders (or the Sale Agent, as applicable);
- (b) any cheque or electronic funds transfer required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Target Share Register as at the Record Date; and

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- (c) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

### 5.3 Ineligible Foreign Shareholders

- (a) Bidder and Bidder Australia will be under no obligation to issue any New Bidder Shares whether or not in the form of CDIs under this Scheme to any Ineligible Foreign Shareholder nor to pay the cash component of the Scheme Consideration payable to Ineligible Foreign Shareholders into the Target-operated trust account in accordance with clause 5.1, but instead:

- (1) subject to clause 5.4, Bidder must, on or before the Implementation Date, issue the New Bidder Shares, some or all of which may be in the form of CDIs, that would otherwise be required to be issued to the Ineligible Foreign Shareholders in the form of CDIs under this Scheme to the Sale Agent as nominee for the Ineligible Foreign Shareholders;
- (2) Bidder must procure that as soon as reasonably practicable after the Implementation Date, the Sale Agent, in consultation with Target and Bidder sells or procures the sale or sales, in the ordinary course of trading on ASX or SGX as considered appropriate by the Sale Agent, of all the New Bidder Shares and CDIs issued to the Sale Agent and remits to Bidder the proceeds of the sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (**Proceeds**);
- (3) promptly after receiving the entire Proceeds, Bidder or Bidder Australia must pay to each Ineligible Foreign Shareholder, the amount "A" calculated in accordance with the following formula and rounded down to the nearest cent:

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

where

- B = the number of New Bidder Shares in the form of CDIs that would otherwise have been issued to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder;
- C = the total number of New Bidder Shares in the form of CDIs which would otherwise have been issued to all Ineligible Foreign Shareholders collectively and which are issued to the Sale Agent;
- D = the Proceeds (as defined in clause 5.3(a)(2)); and
- E = the cash component of the Scheme Consideration payable to that Ineligible Foreign Shareholder in accordance with the terms of this Scheme.

- (b) None of Target, Bidder, Bidder Australia or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Bidder Shares (whether in the form of CDIs or not) described in clause 5.3(a).
- (c) Bidder or Bidder Australia must pay or procure payments to be made to Ineligible Foreign Shareholders under clause 5.3(a) in currency agreed with Target by:
  - (1) where an Ineligible Foreign Shareholder has, before the Record Date, made an election in accordance with the requirements of the Target Share Registrar to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Ineligible Foreign Shareholder, paying, or procuring the payment of, the relevant amount by electronic means in accordance with that election; or
  - (2) otherwise, dispatching, or procuring the dispatch of, a cheque to the Ineligible Foreign Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Ineligible Foreign Shareholder (or in the case of

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joint holders, in accordance with the procedures set out in clause 5.2), for the relevant amount.

- (d) If Bidder or Bidder Australia receives professional advice that any withholding or other tax is required by law to be withheld from a payment to an Ineligible Foreign Shareholder, Bidder or Bidder Australia is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme including clause 5.3(a)(3)). Bidder or Bidder Australia must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and provide a receipt or other appropriate evidence of such payment (or procure the provision of such a document) to the relevant Ineligible Foreign Shareholder.
- (e) Each Ineligible Foreign Shareholder appoints Target as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Shareholders under the Corporations Act.
- (f) Payment of the amount calculated in accordance with clause 5.3(a) to an Ineligible Foreign Shareholder in accordance with this clause 5.3 satisfies in full the Ineligible Foreign Shareholder's right to Scheme Consideration.
- (g) Where the issue of New Bidder Shares in the form of CDIs to which a Scheme Shareholder would otherwise be entitled under this Scheme would result in a breach of law or breach of a provision of Bidder's articles of association:
- (1) Bidder will procure the issue of the maximum possible number of New Bidder Shares in the form of CDIs to the Scheme Shareholder without giving rise to such a breach; and
  - (2) any further New Bidder Shares in the form of CDIs to which that Scheme Shareholder is entitled, but the issue of which to the Scheme Shareholder would give rise to such a breach, will instead be issued to the Sale Agent (as CDIs or New Bidder Shares) and dealt with under the preceding provisions of this clause 5.3, as if a reference to Ineligible Foreign Shareholders also included that Scheme Shareholder and references to that person's New Bidder Shares in the form of CDIs in that clause were limited to the New Bidder Shares (whether in the form of CDIs or not) issued to the Sale Agent under that clause.

#### 5.4 Fractional entitlements and splitting

- (a) Where the calculation of the number of New Bidder Shares in the form of CDIs to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a CDI, the fractional entitlement will be rounded to the nearest whole number of CDIs with any fractional entitlement of less than 0.5 being rounded down to the nearest whole number of CDIs, and any fractional entitlement to 0.5 or more being rounded up to the nearest whole number of CDIs (as applicable).
- (b) Any cash amount payable to a Scheme Shareholder under this Scheme must be rounded to the nearest whole cent, with any fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any fractional entitlement to 0.5 or more being rounded up to the nearest whole number of cents (as applicable).
- (c) If Bidder and Target are of the opinion, formed reasonably, that two or more Scheme Shareholders, each of which holds a holding of Scheme Shares that results in a fractional entitlement to New Bidder Shares in the form of CDIs or cash under this Scheme, have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each Scheme Shareholder's entitlement to the Scheme Consideration, Bidder and Target may give notice to those Scheme Shareholders:
- (1) setting out the names and registered addresses of all of them;
  - (2) stating that opinion; and



- (3) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

## 5.5 Unclaimed monies

- (a) Bidder or Bidder Australia may cancel a cheque or electronic funds transfer issued under clause 5 if the cheque or electronic funds transfer:
- (1) is returned to Bidder or Bidder Australia; or
  - (2) in the case of a cheque, has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request from a Scheme Shareholder, Bidder or Bidder Australia must reissue a cheque or electronic funds transfer that was previously cancelled under this clause.

## 5.6 Orders of a court

If:

- (a) written notice is given to Target (or the Target Share Registrar) or Bidder or Bidder Australia of an order made by a court of competent jurisdiction that requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clauses 5.1(b)(2) or 5.3(a), then Bidder and Bidder Australia shall be entitled to procure that payment is made in accordance with that order; or
- (b) written notice is given to Target (or the Target Share Registrar) or Bidder or Bidder Australia of an order made by a court of competent jurisdiction that prevents Bidder or Bidder Australia from making a payment to a particular Scheme Shareholder in accordance with clause 5, or such payment is otherwise prohibited by applicable law, Bidder and Bidder Australia shall be entitled to retain the amount of the relevant payment until such time as payment in accordance with this Scheme is permitted by that order or otherwise by law.

## 5.7 Status of New Bidder Shares

Subject to this Scheme becoming Effective, Bidder must:

- (a) issue the New Bidder Shares required to be issued by it under this Scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share;
- (b) ensure that the New Bidder Shares will have the right to participate in Bidder dividends with a record date on or after the Implementation Date;
- (c) ensure that each such New Bidder Share is duly and validly issued in accordance with all applicable laws and Bidder's articles of association, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under Bidder's articles of association); and
- (d) use its best endeavours to ensure that Bidder will be admitted to ASX and the New Bidder Shares issued pursuant to the Scheme will be quoted for trading on the SGX and the CDIs will be quoted for trading on the ASX with effect from the Business Day after the Effective Date (or such later date as MAS or ASIC may require) initially on a deferred settlement basis and with effect from the Business Day after the Implementation Date on an ordinary (T+3) settlement basis.

## 6 Dealings in Target Shares

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### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised if:

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

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

### 6.2 Register

- (a) Target must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) on or before the Record Date; provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the Operating Rules of the ASX).
- (b) If the Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Target Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder Australia) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Target Share Register (other than entries on the Target Share Register in respect of Bidder Australia) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Share Register are available to Bidder or Bidder Australia in the form Bidder or Bidder Australia reasonably requires.

## 7 Quotation of Target Shares

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

- (2) to have itself removed from the official list of the ASX.

## 8 General Scheme provisions

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### 8.1 Consent to amendments to the Scheme

If the Court proposes to approve the Scheme subject to any alterations or conditions:

- (a) Target may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel for Target has consented to.

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
- (1) agrees to the transfer of their Target Shares together with all rights and entitlements attaching to those Target Shares in accordance with the Scheme;
  - (2) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from the Scheme;
  - (3) agrees to become a shareholder in Bidder and to be bound by Bidder's articles of association; and
  - (4) acknowledges that the Scheme binds all Scheme Shareholders.
- (b) Each Scheme Shareholder is taken to have warranted to Bidder and Bidder Australia, and appointed and authorised Target as its attorney and agent to warrant to Bidder and Bidder Australia, that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under the Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Target Shares to Bidder Australia together with any rights attaching to those shares. Target undertakes that it will provide such warranty to Bidder and Bidder Australia as agent and attorney of each Scheme Shareholder.

### 8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares transferred under the Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (b) On and from the Implementation Date, Bidder Australia will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by Target of Bidder Australia in the Target Share Register as the holder of the Scheme Shares.

### 8.4 Appointment of sole proxy

On the Scheme becoming Effective, and until Target registers Bidder Australia as the holder of all Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Bidder Australia as attorney and agent (and directed Bidder Australia in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder Australia as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;

- (b) no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 8.4(a)); and
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder Australia reasonably directs.

### **8.5 Authority given to Target**

On the Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against Bidder and Bidder Australia, and Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder and Bidder Australia on behalf of and as agent and attorney for Scheme Shareholders; and
  - (b) executing any document or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,
- and Target accepts such appointment. Target as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

### **8.6 Instructions and elections**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by a Scheme Shareholder to Target that are binding or deemed to be binding between them and that relate to Target or Target Shares (including any email addresses, instructions relating to communications from Target, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from Target) will be deemed from the Implementation Date (except to the extent determined otherwise by Bidder in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to Bidder and to be a binding instruction, notification or election to, and accepted by, Bidder in respect of the CDIs issued to that Scheme Shareholder and the New Bidder Shares underlying those CDIs until that instruction, notification or election is revoked or amended in writing addressed to Bidder at its registry.

### **8.7 Binding effect of Scheme**

This Scheme binds Target and all of the Scheme Shareholders (including those who did not attend the meeting of Target shareholders to vote on this Scheme, did not vote at that meeting, or voted against this Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of Target.

## **9 General**

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### **9.1 Stamp duty**

Bidder or Bidder Australia will:

- (a) pay all stamp duty (if any) and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under or in connection with this Scheme and the Deed Poll; and

- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1.

**9.2 Consent**

Each of the Scheme Shareholders consents to Target doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

**9.3 Notices**

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Target's registered office or at the office of the Target Share Registrar.

**9.4 Governing law**

- (a) The Scheme is governed by the laws in force in New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

**9.5 Further action**

Target must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

**9.6 No liability when acting in good faith**

Neither Target nor any director, officer or secretary of Target will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

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## Definitions and interpretation

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### 1 Definitions

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The meanings of the terms used in this Scheme are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
ASX	the licensed cash equity financial market operated by ASX Limited ABN 98 008 624 691.
Bidder	Singapore Exchange Limited (Company Registration Number 1999 04940D) of 2 Shenton Way #19-00 SGX Centre 1 Singapore 068804.
Bidder Australia	[Singapore Exchange Australia] Pty Ltd ACN [insert] of [insert registered address]
Bidder Register	the register of shareholders of Bidder maintained by Bidder or its agent.
Business Day	a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney and Singapore.
CDI	CHES Depositary Interest, being a unit of beneficial ownership in a New Bidder Share registered in the name of CDN.
CDN	CHES Depositary Nominees Pty Limited ACN 071 346 506.
CHES	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Court	the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and

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Term	Meaning
	Bidder.
Deed Poll	the deed poll substantially in the form of Attachment 1 under which Bidder and Bidder Australia each covenants in favour of the Scheme Shareholders to perform its obligations under this Scheme.
Effective	the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to this Scheme.
Effective Date	the date on which this Scheme becomes Effective.
End Date	25 July 2011 or such other date agreed in writing between Target and Bidder.
Implementation Agreement	the Merger Implementation Agreement dated 25 October 2010 between Target and Bidder relating to the implementation of this Scheme.
Implementation Date	the ten Business Day after the Record Date, or such other day as Target and Bidder agree in writing.
Ineligible Foreign Shareholder	a Scheme Shareholder whose address shown in the Target Share Register on the Record Date is a place outside Australia and its external territories and Singapore, unless Bidder determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with New Bidder Shares in the form of CDIs when the Scheme becomes Effective.
MAS	the Monetary Authority of Singapore.
New Bidder Share	a fully paid ordinary share in Bidder.
Permitted Target Dividend	a fully franked interim dividend not exceeding ninety percent (90%) of Target's consolidated underlying net profit after tax for the half year ending 31 December 2010.
Record Date	5.00pm (Sydney time) on the fifth Business Day after the Effective Date or such other time and date as Target and Bidder agree in writing.
Registered Address	in relation to a Target Shareholder, the address shown in the Target Share Register on the Record Date.

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Term	Meaning
Regulatory Authority	<p>(a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and</p> <p>(b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange,</p> <p>in any part of the world.</p>
Sale Agent	the nominee or nominees appointed by Bidder to hold or sell the New Bidder Shares (whether in the form of CDIs or not) that are to be issued under clause 5.3(a)(1) of this Scheme.
Scheme	this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Target and Bidder.
Scheme Consideration	3.473 New Bidder Shares (in the form of CDIs), and the amount of A\$22 cash in respect of each Scheme Share, as reduced by the cash amount of any dividend or distribution other than the Permitted Target Dividend, the record date for which falls during the period commencing on and from 25 October 2010 and ending immediately prior to the Implementation Date subject to the terms of this Scheme.
Scheme Shares	all Target Shares held by the Scheme Shareholders as at the Record Date.
Scheme Shareholder	a holder of fully paid ordinary shares in Target recorded in the Target Share Register as at the Record Date.
Scheme Transfer	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all or part of the Scheme Shares.
Second Court Date	the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.
SGX	Singapore Exchange Securities Trading Limited in its capacity as an Approved Exchange under the Securities and Futures Act, Chapter 289 of Singapore.
subsidiary	has the meaning given in the Corporations Act.

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Term	Meaning
Target	ASX Limited ABN 98 008 624 691.
Target Share	a fully paid ordinary share in Target.
Target Shareholder	a person who is registered as the holder of a Target Share.
Target Share Register	the register of members of Target maintained in accordance with the Corporations Act.
Target Share Registrar	Link Market Services Limited ACN 083 214 537.

## 1 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Regulatory Authority as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of them;
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) the word "includes" in any form is not a word of limitation;
- (j) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (k) a reference to any time is a reference to that time in New South Wales;
- (l) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
- (m) a reference to a party to a document includes that party's successors and permitted assignees;
- (n) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;

- (o) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (p) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (q) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
- (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

## 2 Interpretation of inclusive expressions

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Specifying anything in this Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

## 3 Business Day

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

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Deed Poll

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**Annexure B Deed Poll**

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CLAYTON UTZ

## Deed Poll

Singapore Exchange Limited  
Bidder

[Singapore Exchange Australia] Pty Limited  
Bidder Australia

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Deed Poll made at

on

2010

**Parties**                    **Singapore Exchange Limited (Company Registration Number 1999 04940D)** of 2 Shenton Way, #19-00 SGX Centre 1, Singapore 068804 (Bidder)

**[Singapore Exchange Australia] Pty Limited [Singapore Exchange Australia's ACN]** of [insert address] (Bidder Australia)

In favour of each holder of fully paid ordinary shares in ASX Limited (ABN 98 008 624 691) (Target) as at the Record Date (Scheme Shareholders)

## Background

- A. Bidder and Target have entered into the Implementation Agreement with respect to the Scheme and associated matters.
- B. Bidder and Bidder Australia are entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to provide the Scheme Consideration and undertake all other actions attributed to it under the Scheme.

## Operative provisions

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### 1. Interpretation and definitions

#### 1.1 Definitions

In this deed poll, unless the context otherwise requires, terms defined in the Implementation Agreement or the Scheme have the same meaning when used in this deed poll.

#### 1.2 Interpretation

Clause 1 of the Implementation Agreement applies to the interpretation of this deed poll, except that references to "this agreement" are to be read as references to "this deed poll".

---

### 2. Nature of deed poll

Each of Bidder and Bidder Australia acknowledges and agrees that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against Bidder and Bidder Australia.

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### 3. Conditions

#### 3.1 Conditions

The obligations of each of Bidder and Bidder Australia under clause 4.1(a) are subject to the Scheme becoming Effective.

### **3.2 Termination**

Unless Target and Bidder agree otherwise, the obligations of each of Bidder and Bidder Australia under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

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

### **3.3 Consequences of termination**

If this deed poll is terminated under clause 3.2, then in addition and without prejudice to any other available rights, powers or remedies:

- (a) Bidder and Bidder Australia are each released from their obligations to further perform this deed poll except those obligations contained in clause 8.1; and
- (b) Each Scheme Shareholder retains the rights they have against Bidder and Bidder Australia in respect of any breach of this deed poll by Bidder or Bidder Australia which occur before this deed poll is terminated.

---

## **4. Obligation to pay Scheme Consideration**

### **4.1 Obligation to provide Scheme Consideration and other matters**

Subject to clause 3, each of Bidder and Bidder Australia undertake in favour of each Scheme Shareholder to:

- (a) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder; and
- (b) undertake all other actions attributed to it under the Scheme,

subject to and in accordance with the terms of the Scheme.

### **4.2 Status of New Bidder Shares**

Bidder undertakes in favour of each Scheme Shareholder that the New Bidder Shares which are issued to Scheme Shareholders, CDN, and the Sale Agent in accordance with the Scheme will:

- (a) rank equally in all respects with each existing Bidder Share;
- (b) have the right to participate in Bidder dividends with a record date on or after the Implementation Date; and
- (c) be duly and validly issued in accordance with all applicable laws and Bidder's articles of association, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under Bidder's articles of association).

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## **5. Representations and warranties**

- (a) Bidder represents and warrants that:



- (i) it is a corporation duly incorporated, and validly existing under the laws of Singapore;
  - (ii) subject to the satisfaction of the condition set out in clause 3.1(l) of the Implementation Agreement, it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
  - (iii) subject to the satisfaction of the condition set out in clause 3.1(l) of the Implementation Agreement, it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll; and
  - (iv) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms.
- (b) Bidder Australia represents and warrants that:
- (i) it is a corporation duly incorporated, validly existing and in good standing under the laws of Australia;
  - (ii) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
  - (iii) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll; and
  - (iv) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms.

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## 6. Continuing obligations

This deed poll is irrevocable and subject to clause 3 remains in full force and effect until the earlier of:

- (a) each of Bidder and Bidder Australia having fully performed its respective obligations under this deed poll; or
- (b) the termination of this deed poll under clause 3.2.

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## 7. Further assurances

Each of Bidder and Bidder Australia will do all things and execute all deeds, instruments, transfers or other documents and do all acts or things as may be necessary or desirable to give full effect to the provisions of this deed poll and the transactions contemplated by it.

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## 8. General

### 8.1 Stamp duty

Bidder and Bidder Australia must:

- (a) pay all stamp duty (if any) and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under or in connection with this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.1(a).

## **8.2 Procurement of performance**

Bidder must procure that Bidder Australia performs all obligations which Bidder Australia is required to perform under this deed poll.

## **8.3 Notices**

- (a) Any notice or other communication to Bidder or Bidder Australia in connection with this deed poll must be in legible writing in English, signed by the person making the communication or its agent and must be given to Bidder or Bidder Australia either by hand delivery, pre-paid post or facsimile, in each case addressed in the manner relevantly described below:

Address:

Facsimile

With a copy to:

Address:

Facsimile:

Attention:

- (b) Any notice or other communication given in accordance with clause 8.3(a) shall, in the absence of proof of earlier receipt, be deemed to have been duly given as follows:
- (i) if delivered by hand, on delivery;
  - (ii) if sent by pre-paid mail, on the third Business Day after posting; and
  - (iii) if sent by facsimile, at the local time (in the place of receipt of the fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety.
- (c) Any notice delivered or received other than on a Business Day or after 5.00 pm (recipient's time) is regarded as received at 9.00 am on the following Business Day and a notice delivered or received before 9.00 am (recipient's time) is regarded as received at 9.00 am.

## **8.4 Cumulative rights**

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

## **8.5 Waiver and variation**

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed poll.
- (c) A provision of this deed poll may not be varied unless the variation is agreed to by Target in writing and the Court indicates that the variation would not of itself procure approval of the Scheme, in which event Bidder and Bidder Australia must enter into a further deed poll in favour of the Scheme Shareholders giving effect to such amendment.

## **8.6 Governing law and jurisdiction**

- (a) The laws of New South Wales govern this deed poll.
- (b) Each party irrevocably submits to the jurisdiction of the courts exercising jurisdiction in New South Wales, and any court may hear appeals from any of those courts, for any proceedings in connection with this deed poll.
- (c) Each party irrevocably waives any right it may have to claim that the courts referred to in clause 8.6(b) are an inconvenient forum.

## **8.7 Assignment**

- (a) The rights of a Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged or otherwise dealt with, and no person shall attempt or purport to do so, without the prior written consent of Bidder.
- (b) Any purported dealing in contravention of clause 8.7(a) is invalid.

**Executed as a deed.**

**Executed by Singapore Exchange Limited:**

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

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

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

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

**Executed by Singapore Exchange Australia Pty Limited [insert ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):**

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

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

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

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

For personal use only