



ASX/MEDIA RELEASE

14 June 2018

Sirtex Terminates the Varian Scheme and Enters into a Binding Scheme Implementation Deed with CDH Genetech and China Grand Pharma

Sirtex Medical Limited (**Sirtex**) (ASX:SRX) announced on 22 May 2018 that it had received an offer capable of acceptance from CDH Genetech Limited, an entity wholly-owned by funds advised by CDH Investments (**CDH**), for the acquisition of all of the shares in Sirtex for A\$33.60 per share, by way of a scheme of arrangement.

The proposal has been amended such that it is now being made jointly by both CDH and its strategic partner, China Grand Pharmaceutical and Healthcare Holdings Limited (**CGP**) (collectively **the Bidders**). Under the terms of the revised proposal (the **CDH-CGP Proposal**), the Bidders will jointly acquire Sirtex and are jointly and severally liable for the obligations to complete the acquisition. The material terms and conditions of the CDH-CGP Proposal are otherwise broadly consistent with those set out in Sirtex's announcement of 22 May 2018.

As required under the terms of the scheme implementation deed with Varian Medical Systems, Inc. (**Varian**) (the **Varian Scheme Implementation Deed**), Sirtex issued a notice to Varian providing it with a right to submit a matching or superior proposal to the CDH-CGP Proposal. Consistent with its previous public statement, Varian has confirmed that it will not submit a matching or superior proposal to the CDH-CGP Proposal.

Change in Sirtex Board recommendation

The Board of Sirtex has unanimously formed the view that the CDH-CGP Proposal is superior to the proposed scheme of arrangement with Varian (**Varian Scheme**) and is in the best interests of Sirtex shareholders.

The Interim Chairman of Sirtex, Dr John Eady said "The Board has undertaken a comprehensive investigation of the merits and risks of the CDH-CGP Proposal, including seeking specialist advice in relation to specific regulatory, legal, funding and other risks. Based on the materially higher offer price and our evaluation of the associated risks, the Board of Sirtex has formed the unanimous view that the CDH-CGP Proposal is a superior proposal and is in the best interests of shareholders."

Sirtex has entered into a binding scheme implementation deed with the Bidders (**CDH-CGP Scheme Implementation Deed**) under which it is proposed that they will acquire 100% of the shares in Sirtex for A\$33.60 in cash per Sirtex share (**Scheme Consideration**) by way of a scheme of arrangement (the **CDH-CGP Scheme**).

The Sirtex Board unanimously recommends that Sirtex shareholders vote in favour of the CDH-CGP Scheme and intend to vote shares in their control in favour of the proposed CDH-CGP Scheme, subject to Sirtex not receiving a superior proposal and the independent expert concluding that the CDH-CGP Scheme is in the best interests of Sirtex shareholders.

Sirtex will now terminate the Varian Scheme Implementation Deed and apply to the Court for orders to cancel the scheme meeting in respect of the Varian Scheme. Sirtex is required to pay a break fee to Varian of approximately A\$16 million as a result of the Sirtex Board supporting the CDH-CGP Scheme.

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CDH and CGP have agreed to indemnify Sirtex against this break fee in the CDH-CGP Scheme Implementation Deed.

The Chief Executive Officer of Sirtex, Andrew McLean commented "The CDH-CGP Scheme represents an exciting opportunity to enhance the growth of the Sirtex business, including through entry into new geographies, and we look forward to working with CDH and CGP to implement the transaction. I would also like to thank the Varian team for their professional and constructive approach throughout the period of our engagement."

Overview of the CDH-CGP Scheme

Sirtex shareholders will be entitled to A\$33.60 in cash for each Sirtex share held if the CDH-CGP Scheme is implemented. Sirtex is permitted to pay a dividend of up to A\$0.30 per share (**Permitted Dividends**) to eligible shareholders prior to completion of the CDH-CGP Scheme. To the extent that Permitted Dividends are paid, the A\$33.60 cash consideration will be reduced by the amount of the Permitted Dividends.¹

The Scheme Consideration of A\$33.60 cash per share represents a 78.4% premium to the undisturbed Sirtex share price on 29 January 2018 (the day prior to the announcement of the Varian Scheme) and implies a fully diluted market capitalisation for Sirtex of approximately A\$1.9 billion.

The CDH-CGP Scheme is subject to the following conditions precedent:

- the Independent Expert concluding, and continuing to conclude, that the CDH-CGP Scheme is in the best interests of shareholders;
- confirmation from the Treasurer of the Commonwealth Government (or his delegate) that the Commonwealth of Australia does not object under FATA or its foreign investment policy to the transaction (the **FIRB approval condition**);
- approval by the US Federal Trade Commission (the **US anti-trust condition**);
- no court or government agency in Australia, the United States, Germany, Italy, Belgium, the United Kingdom or Ireland issuing any temporary restraining order, preliminary or permanent injunction or other order restraining, preventing or imposing any legal restraint on the CDH-CGP Scheme (the **no restraining actions condition**);
- no Prescribed Occurrences (as defined in the CDH-CGP Scheme Implementation Deed) having occurred by the date of the second Court hearing;
- approval by Sirtex shareholders and the Court; and
- there being no insolvency event occurring in relation to the Bidders (the **no insolvency event condition**).

The CDH-CGP Scheme is not conditional on there being no material adverse change in Sirtex's financial performance or position.

The Bidders have deposited A\$171 million with a major Australian bank and are required to deposit a further A\$49 million within the next 10 business days. Sirtex will be entitled to retain A\$200 million (plus GST) from this amount in the event that the CDH-CGP Scheme does not proceed due to:

- failure to satisfy the FIRB condition or the US anti-trust condition;
- failure to satisfy the no restraining actions condition;
- failure to satisfy the no insolvency event condition;
- Sirtex and the Bidders agreeing voluntarily to withdraw the application for approval of the transaction by The Committee for Foreign Investment in the United States (**CFIUS**) (see further below); or

¹ The quantum of any dividends to be paid, which may be equal to or less than A\$0.30 per share will be determined by the Sirtex Board prior to the announcement of the full year result for FY18

- Sirtex validly terminating the CDH-CGP Scheme Implementation Deed due to a material breach by either of the Bidders of the terms or the representations and warranties provided by them in the CDH-CGP Scheme Implementation Deed.

If the CDH-CGP Scheme is approved and implemented, the A\$200 million (plus GST) on deposit will form part payment of the overall consideration of approximately A\$1.9 billion payable to Sirtex shareholders.

Under the CDH-CGP Scheme Implementation Deed, Sirtex is bound by customary exclusivity provisions including "no shop", "no talk" (subject to the Sirtex Directors' fiduciary obligations), and "notification" obligations as well as "matching" rights. A break fee of 1.0% of the equity value, approximately A\$19 million, will be payable by Sirtex to the Bidders in certain circumstances.

A copy of the CDH-CGP Scheme Implementation Deed is attached to this announcement.

Overview of the Bidders

On completion of the CDH-CGP Scheme, Sirtex will be ultimately owned 51% by funds advised by CDH, and 49% by CGP.

CDH is a China-based alternative asset fund manager with over US\$20 billion of committed capital under management. CDH was established in 2002 and invests capital on behalf of leading international pension funds, endowments, family offices, corporates and sovereign wealth funds. CDH Fund V, L.P. (**CDH Fund V**) is an offshore USD private equity fund managed by CDH with US\$2.6 billion of total capital commitments. Previous investments made by CDH-managed funds include:

- partnering with a leading China manufacturer of small kitchen appliances to acquire Euro-Pro HoldCo LLC/SharkNinja, a leading US brand of vacuums and motorised kitchen appliances, for US\$1.6 billion;
- partnering with WH Group Limited, the largest pork company in China, to acquire Smithfield Foods, Inc. in the US for US\$7.1 billion;
- leading the acquisition of Fujian Nanping Nanfu Battery Company Limited, China's leading alkaline battery manufacturer, from Proctor & Gamble Co. for US\$706 million;
- the acquisition of GO Healthy New Zealand Ltd, a leading New Zealand health supplement manufacturer; and
- co-investing with Belle International Holdings Limited, China's largest shoe retailer, to acquire Baroque Japan Limited, a leading Japanese apparel brand for US\$360 million.

CGP is principally engaged in the development, manufacture and sale of pharmaceutical preparations, medical devices, pharmaceutical intermediates, specialised raw materials and healthcare products. It is listed on the Hong Kong Stock Exchange, with a market capitalisation of approximately A\$2.2 billion. CGP is approximately 59%² owned by China Grand Enterprises, Inc. (**CGE**), a Chinese conglomerate whose core businesses include the research, manufacture and sale of pharmaceutical products in China, including oncology therapies.

² This comprises shares owned by CGE controlled subsidiaries Outwit Investments Limited, East Ocean Capital (Hong Kong) Company Limited and Shanghai China Grand Asset Finance Investment Management Co., Limited

Rationale for the Board's decision

The Board has assessed the CDH-CGP Proposal and the Varian Scheme having regard to a number of considerations, including the relative offer prices per share, the risks and timing to completion, the impact on Sirtex's operations and the potential outcome for Sirtex shareholders if a control transaction did not complete.

In the course of its assessment of the CDH-CGP Proposal, the Board has received specialist advice regarding specific regulatory, legal, funding and other risks, and has considered, among other things, the specific risks set out below. The Board of Sirtex unanimously believes that the materially higher price contained in the CDH-CGP Proposal outweighs the potential risks and timing delays inherent in the CDH-CGP Proposal and that it is therefore in the best interests of Sirtex shareholders to proceed with the CDH-CGP Scheme.

In particular, the Board has considered the following factors:

(i) Foreign Investment Review Board approval

The Bidders submitted an application to FIRB in respect of the acquisition of Sirtex in May 2018. The Sirtex Board notes that Sirtex does not have substantial operations in Australia and that Varian recently obtained FIRB approval in relation to the proposed Varian Scheme.

(ii) US anti-trust approval

US anti-trust approval under the Hart-Scott-Rodino Anti-trust Improvements Act of 1976 (US) is a condition precedent to the implementation of the Scheme. Neither of the Bidders have any overlapping operations with those of Sirtex in the US.

(iii) Other regulatory considerations

The nature and scale of Sirtex's US operations mean that an acquisition of Sirtex by the Bidders would fall within the jurisdiction of CFIUS. CFIUS has the power to investigate the direct or indirect acquisition of US businesses by non-US parties and, following investigation, to prevent parties from completing an acquisition or direct them to take steps to mitigate any potential concerns.

The Board of Sirtex considers that the overall risk of CFIUS seeking to stop the CDH-CGP Scheme is low, having regard to CDH's previous experience with CFIUS, the nature of Sirtex's operations in the US, and the provisions contained in the CDH-CGP Scheme (see below for further detail).

CDH has previously received CFIUS clearance in relation to its 2013 acquisition of Smithfield Foods, Inc. in partnership with WH Group, forming the world's largest pork company.

Under the terms of the CDH-CGP Scheme, the Bidders are contractually obliged to accept certain specified mitigating actions in relation to Sirtex's US operations if required by CFIUS³, being:

1. the sale, divestiture, licence or disposition of any constituent element;
2. operational or other restrictions or limitations;
3. restrictions on the access and management rights of the Bidders;
4. holding all or an element of the US business under arrangements that delegate control to a third party, whilst retaining ownership; and
5. outsourcing any operations involving collection, management or retention of US patient data and/or manufacturing and other activities involving handling of radioactive materials.

In relation to items 1 – 4 above, the Bidders would not be obliged to take these actions if they would be reasonably likely to result, individually or in aggregate, in a reduction in annual sales of US\$50 million or greater.

³ Provided they are conditioned on the occurrence or implementation of the CDH-CGP Scheme.

Furthermore, under the terms agreed between the parties, if CFIUS raises any issues or concerns about CGP's equity participation that could be addressed to CFIUS' satisfaction by the Bidders restructuring their ownership and other internal arrangements relating to their intended joint ownership and operation of Sirtex (including by CGP not having any ownership interest in, or control rights over, Sirtex's US operations), the Board of Sirtex may require the Bidders to do so.

Although the receipt of CFIUS approval is not a condition to completion of the CDH-CGP Scheme, the Bidders and Sirtex intend to voluntarily notify CFIUS of the proposed acquisition of Sirtex and seek clearance. If the CDH-CGP Scheme were to be subject to a full CFIUS investigation, the statutory timetable for this process is 105 days following submission of the notice. If CFIUS has not completed its investigations in this period, CFIUS could potentially request that the applicants withdraw and refile the notification which would extend the period to receive CFIUS clearance.

(iv) Certainty of funding

CDH Genetech has obtained commitments from the Bank of China, Macau Branch for US\$700 million (approximately A\$933 million)⁴ of debt facilities to be used to fund the Scheme Consideration.

CGP intends to fund its contribution to the Scheme Consideration from existing cash and a HK\$2.8 billion (approximately A\$474 million)⁵ loan facility from Sun Hung Kai Investment Services Limited. The facility has been guaranteed by CGE, which indirectly owns approximately 59% of CGP, and Outwit Investments Limited, one of CGE's controlled entities that holds CGP shares.

CDH and CDH Fund V have provided an equity commitment in respect of CDH Genetech's 51% equity funding requirement under the SID. In addition, CDH and CDH Fund V have provided a commitment that, in the unlikely event that CGP is unable to fund its equity share, they would fund 100% of the equity consideration.

The debt and equity commitments remain conditional on the CDH-CGP Scheme completing.

The proposed investment by CGP is a "major transaction" under the Hong Kong Stock Exchange Listing Rules and, as such, will require the approval of more than 50% of the votes cast by shareholders at a special general meeting of CGP. CGP and Sirtex have been provided irrevocable undertakings by shareholders of CGP that collectively own and control over 50% of the issued shares in CGP to vote their shares in favour of the required resolution. It is currently anticipated that the CGP special general meeting will be held in August 2018, shortly prior to the Sirtex scheme meeting (**Scheme Meeting**). Receipt of CGP shareholder approval is not a condition precedent to the CDH-CGP Scheme.

Indicative timetable and next steps

Sirtex shareholders do not need to take any action at the present time.

Sirtex is preparing a Scheme Booklet which will contain information relating to the CDH-CGP Scheme, including the reasons for the Directors' recommendation and details of the Scheme Meeting. The Scheme Booklet will also include the Independent Expert's Report. The Scheme Booklet is expected to be sent to Sirtex shareholders in July 2018.

It is currently anticipated that Sirtex shareholders will be given the opportunity to vote on the Scheme at a Scheme Meeting expected to be held in late August 2018. An indicative timetable for the CDH-CGP Scheme is set out below:

⁴ For the purposes of this announcement, amounts denominated in US\$ have been converted into A\$ at the exchange rate of US\$1.00 = A\$1.333.

⁵ For the purposes of this announcement, amounts denominated in HK\$ have been converted into A\$ at the exchange rate of HK\$1.00 = A\$0.170.

Event	Expected date
First Court hearing	July 2018
Dispatch of Scheme Booklet to Sirtex shareholders	July 2018
Scheme Meeting	August 2018
Second Court hearing	August 2018
Effective Date	September 2018
Implementation Date	September 2018

Sirtex expects to release its full financial results for the twelve months to 30 June 2018 on 29 August 2018.

Investor conference call

A conference call will be held at 12:00pm (AEST) on Friday, 15 June 2018 for investors and analysts. The conference details are:

Conference ID: 9382 699

Toll Free Dial-in Details

Australia Toll Free:	1800 123 296	Australia Local Dial:	+61 2 8038 5221
USA:	1855 293 1544	Hong Kong:	800 908 865
Singapore:	800 616 2288	United Kingdom:	0808 234 0757
New Zealand:	0800 452 782	Canada:	1855 5616 766
Japan:	0120 994 669	China:	4001 203 085

- ENDS -

About Sirtex Medical, www.sirtex.com

Sirtex Medical Limited (ASX:SRX) is an Australian based medical device company with global market coverage. Its core revenue producing technology, which has regulatory approvals, is a selective internal radiation therapy (SIRT), with clinically proven applications for liver cancer with over 86,000 doses supplied and administered at over 1,160 medical centres in more than 40 countries.

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Scheme Implementation Deed

Sirtex Medical Limited
(ABN 35 078 166 122)

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Holdings Limited**

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This Scheme Implementation Deed is made on

14 June 2018.

Parties:

1. **Sirtex Medical Limited** (ABN 35 078 166 122) of Level 33, 101 Miller Street, North Sydney NSW 2060, Australia (**Sirtex**);
2. **CDH Genetech Limited**, an exempted company incorporated in the Cayman Islands of 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong (**CDH Genetech**); and
3. **China Grand Pharmaceutical and Healthcare Holdings Limited**, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512), of Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong (**China Grand**).

Recitals:

- A. Sirtex and the Bidders have agreed to propose and implement a scheme of arrangement under Part 5.1 of the Corporations Act between Sirtex and its shareholders.
- B. At the request of the Bidders, Sirtex has agreed to propose the Scheme and issue the Scheme Booklet.
- C. The parties are entering into this deed to record their respective rights and obligations in connection with proposing and implementing the Scheme.

1. Definitions and Interpretation

1.1. Definitions

In this deed:

Action means any action, suit, claim, demand, legal proceeding, investigation, inquiry, prosecution, litigation, proceeding, arbitration, mediation or dispute resolution.

Adviser means, in relation to an entity:

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

Agreed SPV means a company in which:

- (a) CDH Genetech owns (directly or indirectly) not less than 51%, and not more than 54%, of the issued share capital; and
- (b) China Grand owns (directly or indirectly) not less than 46%, and not more than 49%, of the issued share capital; and
- (c) no other person has any direct or indirect ownership of the issued share capital, except to the extent that such ownership arises as a result of ownership of securities of, or other interests in, CDH Genetech or China Grand.

Antitrust Laws means:

- (a) the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (US), the Sherman Act of 1890 (US), the Clayton Act of 1914 (US), the Federal Trade Commission Act (US), and any other United States federal or state statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolisation or restraint of trade;
- (b) the *Australian Competition and Consumer Act 2010* (Cth); and
- (c) any other federal, state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolisation or restraint of trade.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires.

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

Bidders means CDH Genetech and China Grand, subject to the rules of interpretation in clause 1.6.

Bidder Entities has the meaning given in clause 3.3(d)(i).

Bidder Facilitation / Break Fee means \$200 million (plus GST).

Bidder Facility Agreements means the debt facility agreements and the related security documents and guarantees to be entered into pursuant to the Debt Commitment Letters.

Bidder Group means each Bidder and each of its respective subsidiaries (excluding, at any time, Sirtex and its subsidiaries to the extent that Sirtex and its subsidiaries are subsidiaries of either Bidder at that time) and a reference to a **member of the Bidder Group** is to each Bidder or any of its respective subsidiaries (excluding, at any time, Sirtex and its subsidiaries to the extent that Sirtex and its subsidiaries are subsidiaries of either Bidder at that time).

Bidder Information means information about the Bidder Group provided or approved by each Bidder or any of its Advisers for inclusion in the Scheme Booklet.

Bidder Parties means the members of the Bidder Group and their respective officers, employees and Advisers.

Bidders' Nominee means any Agreed SPV nominated by the Bidders to acquire Scheme Shares under the Scheme in accordance with clause 2.2(a).

Bidders' Representations and Warranties means the representations and warranties set out in Schedule 1.

Board means the board of directors of Sirtex.

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

CFIUS has the meaning given in clause 3.3(d)(i).

CFIUS Clearance means any of the following:

- (a) a thirty (30)-day review period under the Defense Production Act has expired and the parties have received notice from CFIUS that such review has been concluded and that either the Transaction does not constitute a "covered transaction" under the Defense Production Act

or there are no unresolved national security concerns, and all action under the Defense Production Act is concluded with respect to the Transaction;

- (b) an investigation has been commenced after such thirty (30)-day review period and CFIUS has determined to conclude all action under the Defense Production Act without sending a report to the President of the United States, and the parties have received notice from CFIUS that there are no unresolved national security concerns, and all action under the Defense Production Act is concluded with respect to the Transaction;
- (c) CFIUS has sent a report to the President of the United States requesting the President's decision and the President has announced a decision not to take any action to suspend, prohibit or place any limitations on the Transaction, or the time permitted by law for such action shall have lapsed; or
- (d) any of the foregoing which occur after the parties withdraw a CFIUS Notice filed in connection with the Transaction and subsequently file one or more additional CFIUS Notices in connection with the Transaction.

CFIUS Notice has the meaning given in clause 3.3(d)(i).

China Grand Announcement(s) means the announcement(s) to be prepared and issued by China Grand in connection with seeking the China Grand Shareholder Approvals;

China Grand Board means the board of directors of China Grand.

China Grand Debt Commitment Letter means the credit-approved, executed facility letter and accompanying term sheet and fee letter from Sun Hung Kai Investment Services Limited addressed to China Grand and dated on or about 29 May 2018, as amended by letter from Sun Hung Kai Investment Services Limited addressed to China Grand and dated on or about 7 June 2018.

China Grand Facility Agreements means the debt facility agreements and the related security documents and guarantees to be entered into pursuant to the China Grand Debt Commitment Letter.

China Grand Shareholder Approvals means the approvals of the shareholders of China Grand which are required under the HKEX Listing Rules in respect of the resolutions regarding China Grand's formation of the Bidders' Nominee with CDH Genetech and the transactions contemplated by this deed.

China Grand Shareholder Meeting means the special general meeting of shareholders of China Grand at which the China Grand Shareholder Approvals will be sought.

China Grand Shareholders' Circular means the shareholders' circular to be prepared by China Grand in connection with seeking the China Grand Shareholder Approvals, including the notice of the China Grand Shareholder Meeting.

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

Class Action means Federal Court of Australia Proceeding No VID1375/2017 (*Pawel Kuterba & Todd Hayward v Sirtex Medical Limited*), and/or any other proceedings in any way related to those proceedings or their subject matter.

Commitment Letters means the Equity Commitment Letter and the Debt Commitment Letters.

Competing Proposal means any proposal or transaction which, if completed, would mean a Third Party, whether alone or together with any associate, would:

- (a) (other than as custodian, nominee or bare trustee) acquire an interest in, or a relevant interest in, 20% or more of the Sirtex Shares or the shares of any material subsidiary of Sirtex other than pursuant to the exception in item 9 of section 611 of the Corporations Act;
- (b) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in assets of the Sirtex Group with an aggregate book value representing 20% or more of the total assets of the Sirtex Group as set out in Sirtex's consolidated balance sheet as at 30 June 2017;
- (c) acquire control of Sirtex or any material subsidiary of Sirtex; or
- (d) otherwise acquire or merge or amalgamate with Sirtex or any material subsidiary of Sirtex,

whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction or share buy-back, sale or purchase of shares, securities or assets, global assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), or other transaction or arrangement. For the purposes of paragraphs (a) and (c) above, a subsidiary of Sirtex will be a material subsidiary if:

- (1) the business or property of the subsidiary contributes more than 20% of the consolidated net profit after tax of Sirtex; or
- (2) the business or property of the subsidiary represents more than 20% of the total consolidated assets of Sirtex.

Competition Approvals means any Regulatory Approval required in relation to the Transaction under any Antitrust Law.

Competition Authority means any Government Agency having responsibility for any Antitrust Law.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Deeds means:

- (a) the confidentiality deed between Sirtex and CDH Investments Management (Hong Kong) Ltd. dated on or about 8 May 2018; and
- (b) the confidentiality deed between Sirtex and China Grand dated on or about 29 May 2018.

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

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

Court means the Federal Court of Australia (NSW registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

Debt Commitment Letters means:

- (a) the credit-approved, executed commitment letter and accompanying term sheet and fee letter from Bank of China Limited Macau Branch addressed to CDH Genetech and dated on or about 18 May 2018, as amended and clarified by emails from Nancy Tian of Bank of China Limited Macau Branch sent 21 May 2018 at 6:05pm, 21 May 2018 at 7:24pm, 7 June 2018 at 9:25pm and 8 June 2018 at 12:09pm; and
- (b) the China Grand Debt Commitment Letter.

Deed Poll means a deed poll in favour of all Scheme Shareholders in the form of Annexure C (however with the outstanding information relating to the Bidders' Nominee and the date of this deed

as indicated in square brackets duly completed) or such other form agreed to in writing between the parties.

Deeds of Undertaking means:

- (a) each of the irrevocable and unconditional deeds of undertaking given by Outwit Investments Limited, Shanghai China Grand Asset Finance Investment Management Co., Limited, East Ocean Capital (Hong Kong) Company Limited and China Grand Enterprises, Inc. in favour of each of China Grand, CDH Genetech and Sirtex dated on or about the date of this deed to, among other things, vote in favour of the resolutions in connection with the China Grand Shareholder Approvals; and
- (b) the deed of undertaking given by the Bidders in favour of Sirtex dated on or about the date of this deed titled "CFIUS Related Matters".

Deposit means:

- (a) the Initial Deposit payable in accordance with clause 5.2(b);
- (b) the Second Deposit payable in accordance with clause 5.2(c); and
- (c) from the date that the Bidders are required to pay any further amount to the Deposit Account in accordance with clause 5.2(l)(i), also includes that further amount.

Deposit Account means an interest bearing A\$ denominated bank account with an Australian Bank opened in the name of the Deposit Holder as trustee for Sirtex and the Bidders.

Deposit Agreement means the deposit agreement between Sirtex, the Bidders, Bank of China Limited Macau Branch and the person therein designated as the "Deposit Holder" entered into on or about the date of this deed.

Deposit Holder means the person so designated in the Deposit Agreement.

Deposit Interest means, as at any date, all amounts standing to the credit of the Deposit Account in excess of the Deposit as at that date, after deduction of all bank fees and other charges payable in respect of the investment of the Deposit, and after taking account of any withholding tax payable in respect of those amounts.

Disclosed means fairly disclosed:

- (a) in the Disclosure Materials; or
- (b) in any announcement made by Sirtex on ASX in the 2 years before entry into this deed.

Disclosure Materials means:

- (a) the documents and information contained in the Ansarada online data room to which the Bidders and their Representatives were given access before entry into this deed; and
- (b) any written answers to requests for further information made by Bidders and their Representatives as contained in that online data room before entry into this deed.

Divestiture Action has the meaning given in clause 3.3(c).

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

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

End Date means the date that is 12 months after the date of this deed or such other date as is agreed in writing between the parties.

Equity Commitment Letter means the binding, executed commitment letter dated on or about the date of this deed addressed to the Bidders from CDH Fund V, L.P. and CDH Investments and accepted by the Bidders.

Exclusivity Period means the period from and including the date of this deed to the earlier of:

- (a) the termination of this deed; and
- (b) the End Date.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Government Actor has the meaning given in paragraph (v) of Schedule 1.

Government Agency means any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Australia, the United States of America or elsewhere, including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and the ASX, HKEX or any other stock exchange.

HKEX means The Stock Exchange of Hong Kong Limited.

HKEX Listing Rules means the Rules Governing the Listing of Securities on HKEX.

Implementation Date means the fifth Business Day after the Record Date or such other date after the Record Date as agreed in writing between the parties.

Incoming Directors means the persons nominated in writing to Sirtex by the Bidders no later than 5 Business Days before the Implementation Date.

Independent Expert means the independent expert in respect of the Scheme appointed by Sirtex.

Independent Expert's Report means the report (including any updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme is in the best interests of Sirtex Shareholders.

Initial Deposit means \$165 million, or such larger amount as may be determined by the Bidders up to a maximum amount of \$220 million.

Insolvency Event means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;

- (e) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for:
- (i) its winding up, dissolution or administration; or
 - (ii) it entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them,
- (other than frivolous or vexatious applications, orders, proceedings, notices or steps);
- (f) any of:
- (i) a receiver, receiver and manager, administrative receiver or similar officer is appointed to;
 - (ii) a security interest becomes enforceable or is enforced over; or
 - (iii) a distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

Mitigation Arrangements has the meaning given in clause 3.3(d)(ii).

Order means any decree, judgment, injunction, direction, writ or other order, whether temporary, preliminary or permanent.

Outgoing Directors means the directors of Sirtex advised in writing to Sirtex by the Bidders no later than 5 Business Days before the Implementation Date.

Permitted Dividend means one or more dividends declared or determined by the Board in respect of the period 1 July 2017 to 30 June 2018, provided that the maximum aggregate amount paid or payable by Sirtex in respect of all such dividends is \$0.30 per Sirtex Share.

Prescribed Occurrence means any of the occurrences set out in Schedule 3, other than any such occurrence:

- (a) required under this deed or the Scheme; or
- (b) that has been consented to in writing by the Bidders (and the Bidders must not unreasonably withhold or delay their respective consent to any request for consent from Sirtex where Sirtex has provided reasonable details of the matter (including any material terms) in writing to the Bidders).

Record Date means 7pm on the fifth Business Day following the Effective Date or such other date after the Effective Date as Sirtex and the Bidders agree.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to Sirtex and the Bidders which is provided to ASIC for its review pursuant to section 411(2) of the Corporations Act.

Regulatory Approvals means:

- (a) any approval, clearance, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption from, by or with a Government Agency; and

- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiration or termination of that period without notification.

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

Representative means, in relation to the Bidders or Sirtex:

- (a) each other member of the Bidder Group or the Sirtex Group (as applicable);
- (b) an officer of a member of the Bidder Group or the Sirtex Group (as applicable); or
- (c) an Adviser to a member of the Bidder Group or the Sirtex Group (as applicable).

RG 60 means Regulatory Guide 60 issued by ASIC.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Sirtex and the Scheme Shareholders in the form attached as Annexure B (or such other form agreed to in writing by the parties).

Scheme Booklet means the information described in clause 5.1(b) to be approved by the Court and despatched to the Sirtex Shareholders and which must include the Scheme, an explanatory statement (complying with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the ASX Listing Rules), the Independent Expert's Report, the notice of Scheme Meeting and a proxy form for the Scheme Meeting.

Scheme Consideration means the consideration per Scheme Share to be provided by the Bidders (or the Bidders' Nominee) in consideration for the transfer of the Scheme Share to the Bidders (or the Bidders' Nominee), being, in respect of each Scheme Share, \$33.60 less the amount of any Permitted Dividend paid in respect of the Scheme Share in accordance with clause 4.4(e).

Scheme Meeting means the meeting of Sirtex Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Share means a Sirtex Share held by a Scheme Shareholder.

Scheme Shareholders means Sirtex Shareholders as at the Record Date.

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

Second Deposit means an amount equal to \$220 million less the amount of the Initial Deposit paid by the Bidders in accordance with clause 5.2(b).

Share Register means the register of members of Sirtex maintained in accordance with the Corporations Act.

Sirtex Group means Sirtex and each of its subsidiaries and a reference to a **Sirtex Group Member** or a **member of the Sirtex Group** is to Sirtex or any of its subsidiaries.

Sirtex Parties means members of the Sirtex Group and their respective officers, employees and Advisers.

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Sirtex Reimbursement Fee means the amount equal to 1% of the total Scheme Consideration payable for all the Scheme Shares under the Scheme (excluding for the purposes only of this calculation the reducing impact of any Permitted Dividend).

Sirtex Right means a performance right or a contractual right to be granted a performance right, which performance right confers the right to acquire one unissued Sirtex Share pursuant to the Sirtex Rights Plan.

Sirtex Rights Plan means the Sirtex Executive Rights Plan approved by Sirtex Shareholders at the 2015 annual general meeting held on 27 October 2015 (as amended).

Sirtex Registry means Link Market Services Limited (ABN 54 083 214 537).

Sirtex Representations and Warranties means the representations and warranties of Sirtex set out in Schedule 2.

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

Sirtex Shareholder means each person who is registered in the Share Register as the holder of Sirtex Shares.

Sirtex US Business has the meaning given in clause 3.3(d)(ii)(C).

Superior Proposal means a bona fide Competing Proposal received after the date of this deed that the Board determines, acting in good faith and in order to satisfy what the Board considers to be its fiduciary or statutory duties (having taken advice from its external financial and legal advisers):

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Sirtex Shareholders (as a whole) than the Scheme, taking into account all terms and conditions of the Competing Proposal.

Third Party means a person other than the Bidder Parties and their associates.

Timetable means the indicative timetable for the implementation of the Transaction set out in Annexure A (as may be varied by agreement between the parties).

Transaction means the acquisition of Sirtex by the Bidders (or, if applicable, the Bidders' Nominee) through implementation of the Scheme in accordance with the terms of this deed.

Trust Account has the meaning given in the Scheme.

Varian Transaction means the proposed acquisition of Sirtex by Varian Medical Systems, Inc. (or a wholly owned subsidiary nominated by it) pursuant to the Scheme Implementation Deed between Sirtex and Varian Medical Systems, Inc. dated 30 January 2018.

1.2. Interpretation

In this deed, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;

- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this deed, and a reference to this deed includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word "includes" in any form is not a word of limitation;
- (i) a reference to "\$", "A\$" or "dollar" is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to the time in Sydney, New South Wales, Australia;
- (k) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (l) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to "associate", "control" (by an entity of another entity), "officer", "related body corporate", "subsidiary", "relevant interest" or "voting power" is to that term as defined in the Corporations Act;
- (n) a reference to the ASX Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3. Business Day

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

1.4. Listing requirements included as law

A listing rule or business rule of a securities exchange will be regarded as a "law", and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.5. Statements on the basis of knowledge

Any statement made by Sirtex on the basis of its knowledge is made on the basis that its knowledge is limited to the knowledge which any of Andrew McLean, Darren Smith and any member of the Board has or would have if they had made all reasonable enquiries of the officers and employees of any member of the Sirtex Group with responsibility for the matters to which the statement relates.

1.6. References to Bidders

- (a) All references to 'the Bidders' in this deed are references to each of CDH Genetech and China Grand jointly and severally, other than in respect of:
- (i) the obligation in respect of clause 10.3 (Payment by China Grand to Sirtex) for which China Grand is solely responsible; and
 - (ii) the rights of the Bidders under this deed, as to which clause 1.6(b)(iii) applies.
- (b) Without limiting clause 1.6(a), despite any other provision of this deed, the Scheme and the Deed Poll:
- (i) other than the obligation in respect of clause 10.3 (Payment by China Grand to Sirtex) for which China Grand is solely responsible, each of CDH Genetech and China Grand are jointly and severally responsible and liable for all obligations attributed to the Bidders under this deed, the Scheme and the Deed Poll;
 - (ii) all of the representations and warranties given by the Bidders in Schedule 1 are given jointly and severally; and
 - (iii) all of the rights exercisable by the Bidders under this deed, the Scheme and the Deed Poll are exercisable severally by CDH Genetech and China Grand and any failure by either of them to exercise its rights under this deed, the Scheme and the Deed Poll does not constitute a waiver by the other of its rights.

2. Agreement to Proceed with the Transaction

2.1. Sirtex to propose Scheme

Sirtex agrees to propose the Scheme on and subject to the terms of this deed.

2.2. Nomination of acquirer subsidiary

- (a) Prior to the Business Day before the First Court Date the Bidders must nominate an Agreed SPV to acquire Scheme Shares under the Scheme by providing a written notice which sets out the details of Bidders' Nominee to Sirtex.
- (b) From when the Bidders nominate a Bidders' Nominee to acquire Scheme Shares:
- (i) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Bidders' Nominee rather than the Bidders;
 - (ii) the Bidders must procure that the Bidders' Nominee complies with all of the relevant obligations of the Bidders under this deed and the Deed Poll; and
 - (iii) any such nomination will not relieve the Bidders of their obligations under this deed, including the obligation to pay (or procure the payment by the Bidders' Nominee of) the Scheme Consideration in accordance with the terms of the Scheme.

2.3. Agreement to implement the Scheme

The parties agree to implement the Scheme on and subject to the terms of this deed.

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3. Conditions Precedent and Pre-implementation Steps

3.1. Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of the Bidders under clause 4.3 will not become binding, unless each of the following Conditions Precedent is satisfied or waived (to the extent and in the manner set out in clause 3.6):

Conditions Precedent for benefit of all parties

- (a) **termination of Varian Transaction:** the scheme implementation deed in respect of the Varian Transaction is terminated by Sirtex in accordance with clause 11.1(e) of that deed and in accordance with clause 3.5(a) of this deed, or that scheme implementation deed is otherwise terminated;
- (b) **Shareholder approval:** Sirtex Shareholders approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting;
- (c) **FIRB approval:** before 8am on the Second Court Date, the Treasurer of the Commonwealth of Australia (or his delegate) either:
 - (i) gives the Bidders written advice, which is unconditional or subject only to conditions that are acceptable to the Bidders acting reasonably, that the Commonwealth Government does not object under FATA or its foreign investment policy to the Transaction; or
 - (ii) is or, by passage of time, becomes precluded from making an order under FATA in respect of the Transaction, and remains so precluded until that time;
- (d) **US anti-trust clearance:** all applicable waiting periods (and any extensions thereof) under the Hart Scott Rodino Antitrust Improvements Act of 1976 expire or are otherwise terminated;
- (e) **no restraints:** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction in, or Government Agency of, Australia, the United States of America, Germany, Italy, Belgium, the United Kingdom or Ireland, preventing or imposing any legal restraint on the Transaction is in effect in each case as at 8am on the Second Court Date;
- (f) **Court approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;

Condition Precedent for benefit of the Bidders only

- (g) **no Prescribed Occurrence:** no Prescribed Occurrence occurs between the date of this deed and 8am on the Second Court Date;

Conditions Precedent for benefit of Sirtex only

- (h) **Independent Expert:** the Independent Expert issues a report which concludes that the Scheme is in the best interests of Sirtex Shareholders before the time when the Scheme Booklet is registered with ASIC and the Independent Expert has not publicly withdrawn or qualified this conclusion before 8am on the Second Court Date; and
- (i) **no Bidder Insolvency Event:** neither Bidder suffers an Insolvency Event between the date of this deed and 8am on the Second Court Date.

3.2. Reasonable endeavours

- (a) The Bidders and Sirtex must:

- (i) use reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(b) (shareholder approval), 3.1(e) (no restraints) and 3.1(f) (Court approval) are satisfied; and
- (ii) provide reasonable assistance in satisfying the other Conditions Precedent and ensure that there is no occurrence within the control of a member of the Bidder Group or the Sirtex Group (as the context requires) that would prevent any Condition Precedent being satisfied.
- (b) The Bidders must use reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(c) (FIRB approval), 3.1(d) (US anti-trust clearance) and 3.1(i) (no Bidder Insolvency Event) are satisfied.
- (c) Sirtex must use reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(a) (termination of Varian transaction), 3.1(g) (no Prescribed Occurrence) and 3.1(h) (Independent Expert) are satisfied.
- (d) The Bidders and Sirtex must:
- (i) consult and co-operate fully with the other parties in relation to the satisfaction of the Conditions Precedent, including in relation to all material communications with Government Agencies in relation to Regulatory Approvals;
- (ii) promptly provide to the other parties all material communications with Government Agencies in relation to Regulatory Approvals;
- (iii) promptly notify the other if it becomes aware that any Condition Precedent has been satisfied; and
- (iv) promptly notify the other of any failure to satisfy a Condition Precedent or of any fact or circumstance that will result in a Condition Precedent becoming incapable of being satisfied or that may result in a Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under this clause).
- (e) Without limiting this clause:
- (i) Sirtex must provide the Bidders with all information reasonably requested in connection with the Bidders' applications for the Regulatory Approvals referred to in clause 3.1(c) (FIRB approval) and clause 3.1(d) (US anti-trust clearance); and
- (ii) the Bidders must consult with Sirtex in relation to the submission of and progress of obtaining the Regulatory Approvals referred to in clause 3.1(c) (FIRB approval) and clause 3.1(d) (US anti-trust clearance).
- (f) The Bidders and Sirtex must:
- (i) give the Court on the Second Court Date a certificate confirming (in respect of matters within their respective knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in clause 3.1(f) (Court approval)) have been satisfied or waived; and
- (ii) give the other a draft of its certificate by 5pm on the Business Day before the Second Court Date.

3.3. Regulatory matters

- (a) Without limiting clause 3.2:

- (i) the Bidders must promptly apply for the Regulatory Approvals contemplated by the Conditions Precedent in clause 3.1(c) (FIRB approval) and clause 3.1(d) (US anti-trust clearance) and promptly provide a copy of all such applications and associated correspondence to Sirtex (provided that any commercially sensitive information may be redacted from the copies provided) and, if relevant, must procure each member of the Bidder Group to promptly apply for all such Regulatory Approvals and provide copies of all such applications and correspondence to Sirtex;
- (ii) each party must take all steps it is responsible for as part of the applicable approval or consent process in respect of those Regulatory Approvals, including responding to requests for information at the earliest practicable time;
- (iii) each party (on its own behalf and, in the case of the Bidders, on behalf of each member of the Bidder Group) acknowledges and agrees that each other party has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to the Regulatory Approvals;
- (iv) each party must consult with each other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to those Regulatory Approvals and, without limitation:
- (A) provide each other party with drafts of any material written communications to be sent to a Government Agency and take any reasonable comments made by each other party into account in good faith when making any amendments; and
- (B) provide copies of any material written communications sent to or received from a Government Agency to each other party promptly upon despatch or receipt (as the case may be),
- in each case to the extent it is reasonable, and not in breach of any law or requirement of the relevant Government Agency, to do so;
- (v) without limiting clause 3.3(a)(iv), the Bidders must consult with Sirtex in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) between any member of the Bidder Group and any Government Agency relating to those Regulatory Approvals and, without limitation:
- (A) provide Sirtex with drafts of any material written communications to be sent to a Government Agency and take any reasonable comments made by Sirtex into account in good faith when making any amendments; and
- (B) provide copies of any material written communications sent to or received from a Government Agency to Sirtex promptly upon despatch or receipt (as the case may be),
- in each case to the extent it is reasonable, and not in breach of any law or requirement of the relevant Government Agency, to do so; and
- (vi) subject to the terms of the applicable Condition Precedent, each party must, and the Bidders must procure each member of the Bidder Group to, promptly offer to the relevant Government Agency, and agree or accept, all undertakings, commitments and conditions reasonably necessary or appropriate in order to obtain the approval, confirmation or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so.
- (b) Without limiting clause 3.2, if any Action which may result in a temporary restraining order, preliminary or permanent injunction or other order being issued by any court of competent jurisdiction in, or Government Agency of, Australia, the United States of America, Germany,

Italy, Belgium, the United Kingdom or Ireland preventing or imposing any legal restraint on the Transaction is instituted (or threatened to be instituted), each party must, and the Bidders must procure each member of the Bidder Group to, vigorously contest and resist any such Action (through negotiation, litigation or otherwise), including any Order that is in effect and that prohibits, prevents, delays or restricts the consummation of the Transaction including by pursuing all available avenues of administrative and judicial appeal, so as to enable the consummation of the Transaction as promptly as practicable (and in any event no later than the End Date).

- (c) Notwithstanding anything to the contrary in this deed, the Bidders agree to take (and to cause each member of the Bidder Group to take) as promptly as practicable any and all steps that are necessary or advisable to avoid or eliminate each and every impediment, or that may be required by any Competition Authority, and obtain all Competition Approvals, so as to enable the consummation of the Transaction as promptly as practicable (and in any event no later than the End Date), including, as promptly as practicable, proposing, negotiating, accepting, committing to and effecting, by consent decrees, hold separate orders, trusts, or otherwise (and the entry into agreements with, and submission to orders of, the relevant Competition Authority):
- (i) the sale, divestiture, licence or disposition of such businesses, service lines and assets of Sirtex, the Bidders and their respective subsidiaries, and
 - (ii) operational or other restrictions or limitations on Sirtex, the Bidders and their respective subsidiaries, including with respect to its or their ability to retain one or more of the businesses, service lines or assets of Sirtex, the Bidders or any of their respective subsidiaries,

(any such sale, divestiture, licence or disposition or operational or other restriction or limitation set forth in clause 3.3(c)(i) or 3.3(c)(ii) being hereinafter referred to as a **Divestiture Action**), in each case as may be required in order to avoid the commencement or entry of, or to effect the dissolution of or vacate or lift, any Order that would otherwise have the effect of preventing or unreasonably delaying (having regard to the End Date) the consummation of the Transaction, provided that nothing contained in this deed shall require the Bidders to agree to or effect any Divestiture Action with respect to Sirtex or the Bidders, to the extent that such Divestiture Action is not conditioned upon the occurrence of the implementation of the Scheme or is effective prior to the implementation of the Scheme.

- (d) Without limiting clause 3.2:
- (i) the parties shall use their respective reasonable endeavours, and the Bidders must procure each member of the Bidder Group, CDH China Management Company Limited, CDH V Holdings Company Limited, Outwit Investments Ltd., Grand (Hong Kong) International Investments Holdings Limited, China Grand Enterprises Inc., Mr. Kaijun Hu and Ms. Tung Chau, and the parents, intermediate parents and ultimate parents thereof, and any other individuals or entities that control any of the foregoing (using the definitions of such terms set forth in 31 C.F.R. § 800 et seq) (together, **Bidder Entities**), to use their reasonable endeavours, to take, or cause to be taken, all actions necessary, proper or advisable to submit to the Committee on Foreign Investment in the United States (**CFIUS**) a joint (from the Bidders and Sirtex) voluntary notice of the Transaction (**CFIUS Notice**), including:
 - (A) within 15 Business Days after the date of this deed, make the draft filing with CFIUS contemplated under 31 C.F.R. § 800.401(f);
 - (B) engage in the pre-notice consultation process with CFIUS and following such pre-notice consultation, as promptly as practicable and, in any event, within five Business Days of CFIUS providing comments on the draft filing, file with CFIUS a voluntary notice as contemplated by 31 C.F.R. § 800.401(a);

- (C) submit as part of the CFIUS Notice, among other things:
- (1) the personal identifier information (to be transmitted separately to CFIUS) of a type contemplated by 31 C.F.R. § 800.402(c)(6)(vi)(B), for each officer and director or the equivalent of the Bidder Entities, and for other entities and individuals specifically requested by CFIUS;
 - (2) any shareholder agreements and or other understandings or commitments, informal or formal, between and among any of the Bidder Entities with one another or any third parties with respect to the Transaction or the ownership, governance and control of Sirtex thereafter;
 - (3) all loan and other financing agreements or arrangements with financial institutions contemplated by any of the Bidder Entities that support the Transaction, including without limitation, any such agreements or arrangements between any of the Bidder Entities and the Bank of China, the Sun Hung Kai Investment Services Limited or any affiliates thereof;
- (D) promptly and, in all events, consistent with any deadline imposed under CFIUS or other applicable law, comply with any request received by any of them or any of their respective subsidiaries (or, in the case of either Bidder, any of the Bidder Entities) from any Government Agency for any certification, additional information, documents or other materials in respect of such notice or such transactions or such other matters as CFIUS may request concerning the Bidder Entities and their business operations, sales, activities and conduct (and the Bidders must procure each of the Bidder Entities to comply, promptly with such requests and, in all events, consistent with any deadline imposed under CFIUS or other applicable law);
- (E) ensure that any information furnished in respect of this clause 3.2(d) is true, complete and correct in all material respects; and
- (F) cooperate with each other (and the Bidders must procure each of the Bidder Entities to cooperate with the parties) in connection with any such filing (including, to the extent permitted by applicable law, providing copies, or portions thereof, of all such documents to the non-filing parties (including, where the non-filing party is Sirtex, all such documents from, to or relating to, any of the Bidder Entities) prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any Government Agency under Exon-Florio with respect to any such filing or any such transaction;
- (ii) without limiting clauses 3.3(a), 3.3(c) or 3.3(d)(i), notwithstanding anything to the contrary in this deed:
- (A) Sirtex agrees to take (and to cause the members of the Sirtex Group to take) and the Bidders agree to take (and to cause each Bidder Entity to take) as promptly as practicable any and all steps that are necessary or advisable to avoid or eliminate each and every impediment, or that may be requested or required by CFIUS or any other Government Agency of the United States of America; and
 - (B) the Bidders agree, at a time and in a form reasonably determined by Sirtex, to (and to cause each Bidder Entity to agree to) propose, offer, negotiate, accept, commit to, consent to and effect, by any consent decrees, mitigation agreements, letters of assurance, hold separate orders, trusts, or otherwise (and the entry into agreements with, and submission to orders of, CFIUS or

the relevant Government Agency), that are necessary, advisable, or requested by CFIUS, in connection with obtaining CFIUS Clearance,

so as to enable the consummation of the Transaction as promptly as practicable (and in any event no later than the End Date), (with all such actions set forth in clauses 3.3(d)(ii)(A) and 3.3(d)(ii)(B) above considered **Mitigation Arrangements**), including any Mitigation Arrangements which require:

- (C) the sale, divestiture, licence or disposition of any constituent element of the U.S. businesses, service lines and or assets of the Sirtex Group (**Sirtex US Business**);
- (D) operational or other restrictions or limitations on the Sirtex US Business;
- (E) operational or other restrictions on the rights and ability of any of the Bidder Entities to have access to, or participate in the management of, the Sirtex US Business;
- (F) the holding of the Sirtex US Business or a constituent element thereof in a proxy agreement, voting trust, or other arrangement, under a structure acceptable to CFIUS and or the relevant Government Agency of the United States, that effectively delegates control thereof to a third party while the Bidders retain ownership; and
- (G) the outsourcing to a third party of any U.S. operations of the Sirtex US Business involving (i) U.S. patient data collection, management or retention and/or (ii) the U.S. manufacturing and any other U.S. activities involving the handling of radioactive materials by the Sirtex US Business,

provided that nothing contained in this deed shall require any member of the Sirtex Group or the Bidder Entities to agree to or effect any Mitigation Arrangement with respect to Sirtex or the Bidders, to the extent that:

- (H) such Mitigation Arrangement is not conditioned upon the occurrence of the implementation of the Scheme or is effective prior to the implementation of the Scheme; or
 - (I) the Mitigation Arrangement requires a matter set out in clauses 3.3(d)(ii)(C) to 3.3(d)(ii)(F) above and such Mitigation Arrangement would or would be reasonably likely to result, individually or in the aggregate with all other such Mitigation Arrangements, in a reduction of the consolidated sales of Sirtex during the 12 month period commencing on the proposed implementation of such Mitigation Arrangement of US\$50 million or more. For avoidance of doubt, any Mitigation Arrangement which requires any matter set out in clause 3.3(d)(ii)(G) above will not fall within the exclusion set out in this clause 3.3(d)(ii)(I); and
- (iii) the parties must not participate independently in any meeting or oral communication relating to the transactions contemplated by this deed and involving any substantive conversation, with any Government Agency in respect to the CFIUS Notice or any other filings referred to in clause 3.3(d)(i) without giving the other parties prior notice of the meeting or oral communication and, unless prohibited by such Government Agency, the opportunity to attend or participate (and each Bidder must procure that none of the Bidder Entities participate in any such meeting or communication without giving Sirtex prior notice of the meeting or oral communication and, unless prohibited by such Government Agency, the opportunity to attend or participate).
- (e) The Bidders indemnify Sirtex against, and must pay to Sirtex on demand the amount of, any reasonable third party cost or expense incurred by Sirtex arising out of or in connection with any action taken by Sirtex under clauses 3.2(a), 3.3(a)(ii) and 3.3(b), in so far as it relates to

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the Conditions Precedent in clause 3.1(c) (FIRB approval), clause 3.1(d) (US anti-trust clearance) and clause 3.1(e) (no restraints) and any action taken by Sirtex under clause 3.3(d).

3.4. FIRB conditions

The parties acknowledge that the standard tax conditions issued by the Foreign Investment Review Board from time to time are acceptable if included in the "no objections" notifications.

3.5. Termination of Varian Transaction

- (a) Without limiting clause 3.2:
- (i) Sirtex must promptly take the actions set out in clause 3.1(a) and provide a copy of all associated correspondence to the Bidders; and
 - (ii) Sirtex must consult with the Bidders in advance in relation to all material written communications (whether direct or via a Representative) with Varian Medical Systems, Inc. and its representatives relating to the termination of the Varian Transaction and, without limitation:
 - (A) provide the Bidders with drafts of any material written communications to be sent to Varian Medical Systems, Inc. or its representatives and take any reasonable comments made by the Bidders into account in good faith when making any amendments; and
 - (B) provide copies of any material written communications sent to or received from Varian Medical Systems, Inc. or its representatives to the Bidders promptly upon despatch or receipt (as the case may be).
- (b) The Bidders indemnify Sirtex against, and must pay to Sirtex on demand, the amount of any reimbursement or break fee payable by Sirtex to Varian Medical Systems, Inc. under the scheme implementation deed in respect of the Varian Transaction.

3.6. Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) (termination of Varian Transaction), 3.1(b) (Shareholder approval), 3.1(c) (FIRB approval), 3.1(d) (US anti-trust clearance) and 3.1(f) (Court approval) cannot be waived.
- (b) The Condition Precedent in clause 3.1(e) (no restraints) is for the joint benefit of the Bidders and Sirtex and may only be waived by both of them in writing.
- (c) The Condition Precedent in clause 3.1(g) (no Prescribed Occurrence) is for the sole benefit of the Bidders and may only be waived by the Bidders in writing.
- (d) The Conditions Precedent in clauses 3.1(h) (Independent Expert) and 3.1(i) (no Bidder Insolvency Event) are for the sole benefit of Sirtex and may only be waived by Sirtex in writing.
- (e) A party entitled to waive a Condition Precedent may do so conditionally or unconditionally in its absolute discretion.
- (f) If a party waives the breach or non-fulfilment of any of the Conditions Precedent that waiver precludes that party from suing the other party for any breach of this deed arising as a result of the non-fulfilment of the Condition Precedent that was waived or arising from the same event which gave rise to the non-fulfilment of the Condition Precedent.

3.7. If a Condition Precedent is not fulfilled or waived

- (a) If a Condition Precedent cannot be fulfilled (or has not been fulfilled or waived) by the time or date specified in this deed for satisfaction of the Condition Precedent, or the Scheme has not become Effective by the End Date, Sirtex and the Bidders must consult in good faith to determine whether:
- (i) the Scheme may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods;
 - (ii) to extend the relevant time for satisfaction of the Condition Precedent;
 - (iii) to adjourn or change the date of the Scheme Meeting; or
 - (iv) to extend the End Date.
- (b) Without limiting clause 3.7(a), if a Condition Precedent is not satisfied or waived by the date contemplated in the Timetable as the Second Court Date (including if there is a temporary restraining order, preliminary or permanent injunction or other order of the type referred to in clause 3.1(e) as at that date), Sirtex and the Bidders agree (unless there is no reasonable prospect that the Condition Precedent will be satisfied or waived by the End Date) that the Second Court Date be deferred until such date (not later than the Business Day before the End Date) as reasonably required to enable more time to satisfy the Condition Precedent.

3.8. Termination on failure of Condition Precedent

- (a) If:
- (i) the Scheme has not become Effective by the End Date; or
 - (ii) any event occurs which would, or in fact does, prevent a Condition Precedent being satisfied and that Condition Precedent is not waived by Sirtex or the Bidders or all of them (as applicable) in accordance with clause 3.6,

then, subject to clause 3.8(b), the Bidders or Sirtex may terminate this deed without any liability to the other parties because of that termination (except for any obligation of a party to pay the Bidder Facilitation / Break Fee or the Sirtex Reimbursement Fee (as applicable) in accordance with clause 10).

- (b) A party will not be entitled to terminate this deed pursuant to clause 3.8(a) if the relevant occurrence, or the failure of the satisfaction of a Condition Precedent, or of the Scheme becoming Effective, arises out of, or is caused by:
- (i) a breach of this deed (including clauses 3.2 and 3.3) by that party; or
 - (ii) a deliberate act or omission of that party or its Representatives (or, in the case of either Bidder, a deliberate act or omission of any member of the Bidder Group or its Representatives).
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination of this deed, on termination of this deed no party will have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued before termination.

4. Transaction Steps**4.1. Scheme**

Sirtex must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares will be transferred to the Bidders (or, if applicable, the Bidders' Nominee); and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

4.2. Scheme Consideration

Subject to and in accordance with this deed and the Scheme, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

4.3. Payment of Scheme Consideration

The Bidders undertake to Sirtex (in their own right and as trustee on behalf of the Scheme Shareholders) that, in consideration for the transfer to the Bidders (or, if applicable, the Bidders' Nominee) of each Scheme Share, on the Implementation Date they will:

- (a) accept (or, if applicable, procure the Bidders' Nominee to accept) that transfer; and
- (b) before 12 noon, pay or procure the payment of the Scheme Consideration for each Scheme Share to or at the direction of Sirtex as trustee for the Scheme Shareholders for payment to Scheme Shareholders in accordance with the Scheme.

4.4. Dividends

- (a) From the date of this deed up until and including the Implementation Date, Sirtex must not declare or pay a dividend other than a Permitted Dividend.
- (b) The Bidder acknowledges and agrees that, at any time on or before the Implementation Date, Sirtex may announce, declare and pay a Permitted Dividend.
- (c) Sirtex may frank a Permitted Dividend but only to the extent that it does not cause Sirtex's franking account to be in deficit (as defined in section 204-40(2) of the *Income Tax Assessment Act 1997* (Cth)).
- (d) Sirtex must provide the Bidders with any information pertaining to the franking position of Sirtex that is reasonably requested by the Bidders at any time.
- (e) If Sirtex announces, declares and/or pays a Permitted Dividend in accordance with clause 4.4(b), the Scheme Consideration per Scheme Share will be reduced by the aggregate amount per Scheme Share of the Permitted Dividend.

4.5. No amendment to the Scheme without consent

Sirtex must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidders (not to be unreasonably withheld or delayed in relation to procedural or administrative matters that do not relate to the value of the Scheme Consideration or the Scheme Shares).

5. Implementation

5.1. Sirtex's obligations

Sirtex must take all necessary steps to propose and implement the Scheme as soon as is reasonably practicable, including by doing any acts it is authorised and able to do on behalf of Sirtex Shareholders and each of the following:

- (a) **Timetable:** use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with the Bidders on a regular basis about

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its progress in that regard), subject to clauses 3.7 and 9.5. For the avoidance of doubt, nothing in this clause 5.1(a) restricts the ability of Sirtex to respond to a Competing Proposal in accordance with clause 9;

- (b) **preparation of Scheme Booklet:** subject to clause 5.1(c), prepare the Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, the Corporations Regulations, RG 60 and the ASX Listing Rules. The Scheme Booklet must include a statement that:
- (i) other than the Bidder Information, the Independent Expert's Report and any section on Tax considerations prepared by a Third Party, the Scheme Booklet has been prepared by Sirtex and is the responsibility of Sirtex, and that no Bidder Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Bidder Information); and
 - (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and that no Sirtex Party assumes any responsibility for the accuracy or completeness of the Bidder Information.

The Scheme Booklet must also include the recommendation and statement required under clause 5.6;

- (c) **consultation with Bidders:** consult with the Bidders as to the content and presentation of the Scheme Booklet including:
- (i) providing to the Bidders successive drafts of the Scheme Booklet and allowing the Bidders a reasonable opportunity to review and comment on those draft documents before lodgement of the Scheme Booklet with ASIC;
 - (ii) considering in good faith all comments made by the Bidders and their Representatives for the purpose of amending the Scheme Booklet; and
 - (iii) obtaining each Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet);
- (d) **information:** prepare and promptly provide to the Bidders any information regarding the Sirtex Group that the Bidders reasonably require to prepare the Bidder Information for inclusion in the Scheme Booklet;
- (e) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report as soon as practicable;
- (f) **ASIC and ASX review:** during the Regulatory Review Period, promptly provide to the Bidders, and include in the Scheme Booklet, any new information not included in the Regulator's Draft which is required by the Corporations Act, Corporations Regulations, RG 60 or the ASX Listing Rules to be included and keep the Bidders informed of any material matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by the Bidders;
- (g) **application for no appearance letter and section 411(17)(b) statement:** apply to ASIC for the production of:
- (i) an indication of intent letter stating that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme; and

- (ii) a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Scheme;
- (h) **Court direction:** apply to the Court for orders pursuant to section 411(1) of the Corporations Act directing Sirtex to convene the Scheme Meeting and consult with the Bidders as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders;
- (i) **ASIC registration:** request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (j) **despatch Scheme Booklet:** send the Scheme Booklet to Sirtex Shareholders as soon as practicable after the Court orders Sirtex to convene the Scheme Meeting;
- (k) **Sirtex Rights:** procure that all outstanding Sirtex Rights are vested or lapsed and the relevant resultant Sirtex Shares are issued or agreed to be issued before the Record Date;
- (l) **update Scheme Booklet:** if it becomes aware of information after the Scheme Booklet has been sent to Sirtex Shareholders that is material for disclosure to Sirtex Shareholders in deciding whether to approve the Scheme or that is required to be disclosed to Sirtex Shareholders under any applicable law, inform Sirtex Shareholders of the information in an appropriate and timely manner, in accordance with applicable law, after consulting with the Bidders as to the content and presentation of that information;
- (m) **Share Registry information:** provide all information, or procure that the Sirtex Registry provides all information, in each case in a form reasonably requested by the Bidders, about the Scheme, the Scheme Shareholders, the Sirtex Shareholders and the Share Register (including any sub register) to the Bidders and their Representatives which the Bidders reasonably request in order to solicit votes at the Scheme Meeting and facilitate the provision by, or on behalf of, the Bidders (or, if applicable, the Bidders' Nominee) of the Scheme Consideration;
- (n) **Scheme Meeting:** convene the Scheme Meeting to agree to the Scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (o) **Court approval:** (subject to all Conditions Precedent in clause 3.1, other than the condition in clause 3.1(f) (Court approval) being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme and consult with the Bidders as to the content of all relevant affidavits, submissions and draft minutes of Court orders;
- (p) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with section 411(10) of the Corporations Act approving the Scheme as soon as possible after the Court approves the Scheme, and in any event by 5.00pm on the first Business Day after the day on which the Court approves the Scheme;
- (q) **Scheme Consideration:** close the Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
- (r) **registration:** subject to the Bidders satisfying their obligations under clause 4.3, register all transfers of Sirtex Shares held by Scheme Shareholders to the Bidders (or, if applicable, the Bidders' Nominee) on the Implementation Date; and
- (s) **ASX listing:** take all reasonable steps to maintain Sirtex's listing on the ASX notwithstanding any suspension of the quotation of Sirtex Shares up to and including the Implementation Date, including making appropriate applications to ASX.

5.2. Bidders' obligations

The Bidders must take (or, if applicable, cause the Bidders' Nominee to take) all necessary steps to implement the Scheme as soon as is reasonably practicable, including by doing each of the following:

- (a) **Timetable:** use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and consult with Sirtex on a regular basis about its progress in that regard), subject to clauses 3.7 and 9.5;
- (b) **Initial Deposit:** immediately after execution of this deed, pay the Initial Deposit to the Deposit Holder, to be held by the Deposit Holder as independent stakeholder in accordance with the Deposit Agreement;
- (c) **Second Deposit:** within 10 Business Days of the date of this deed, pay the Second Deposit to the Deposit Holder, to be held by the Deposit Holder as independent stakeholder in accordance with the Deposit Agreement;
- (d) **Bidder Information:** prepare and promptly provide to Sirtex the Bidder Information for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act, the Corporations Regulations, RG 60 and the ASX Listing Rules and consult with Sirtex as to the content and presentation of the Bidder Information in the Scheme Booklet, such consultation to include allowing Sirtex a reasonable opportunity to review and make comments on successive drafts of the Bidder Information before lodgement of the Scheme Booklet with ASIC;
- (e) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Sirtex and provide comments, if any, as soon as practicable;
- (f) **confirmation of Bidder Information:** before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act, either:
- (i) confirm in writing to Sirtex that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
 - (ii) provide to Sirtex the changes required to ensure that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
- (g) **assist Independent Expert:** provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report as soon as practicable;
- (h) **update Bidder Information:** if at any time after the despatch of the Scheme Booklet, a Bidder becomes aware:
- (i) of new information which, were it known at the time of despatch, should have been included in any Bidder Information provided previously to Sirtex; or
 - (ii) that any part of the Bidder Information provided previously to Sirtex is misleading or deceptive in any material respect (whether by omission or otherwise),
- it must advise Sirtex so that Sirtex can determine whether supplementary disclosure to Sirtex Shareholders is required;
- (i) **Deed Poll:** by not later than the Business Day prior to the First Court Date, enter into (and, if applicable, procure that the Bidders' Nominee enters into) the Deed Poll in favour of the Scheme Shareholders to perform their obligations under the Scheme and deliver it to Sirtex;

- (j) **Court representation:** procure that they are represented by counsel at the Court hearings referred to in clauses 5.1(h) and 5.1(o), at which, through their counsel, the Bidders will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (k) **Share transfer:** if the Scheme becomes Effective, accept (or, if applicable, procure the Bidders' Nominee to accept) a transfer of the Sirtex Shares as contemplated by clause 4.3(a); and
- (l) **Scheme Consideration:**
- (i) by no later than the Business Day prior to the date of the Scheme Meeting, pay or procure the payment of an amount equal to the Scheme Consideration less the sum of the Initial Deposit plus the Second Deposit paid by them in accordance with clauses 5.2(b) and 5.2(c), to the Deposit Holder, to be held by the Deposit Holder as independent stakeholder in accordance with the Deposit Agreement; and
- (ii) if the Scheme becomes Effective:
- (A) give or join in giving all instructions and take all other steps as may be necessary to procure the payment of the Deposit from the Deposit Account in accordance with clause 5.3(b); and
- (B) otherwise pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme.

5.3. Deposit

- (a) The Bidders and Sirtex must promptly give or join in giving all instructions and take all other steps as may be necessary to procure that the Deposit Account is operated, and the Deposit and Deposit Interest are applied, in accordance with this clause 5.3.
- (b) Subject to the Scheme becoming Effective, on the Business Day immediately prior to the Implementation Date:
- (i) the Deposit must be paid out of the Deposit Account in cleared funds into the Trust Account in payment of the aggregate amount of the Scheme Consideration in accordance with clause 6.1 of the Scheme; and
- (ii) the Deposit Interest must be paid out of the Deposit Account to the Bidders.
- (c) If this deed is terminated and China Grand is required to pay the Bidder Facilitation / Break Fee to Sirtex in accordance with clause 10.3, within 5 Business Days of the date of termination:
- (i) the Initial Deposit and the Second Deposit must be paid out of the Deposit Account to Sirtex in satisfaction of the obligation of China Grand to pay the Bidder Facilitation / Break Fee to Sirtex; and
- (ii) the balance of the Deposit and the Deposit Interest must be paid out of the Deposit Account to the Bidders.
- (d) If this deed is terminated and China Grand is not required to pay the Bidder Facilitation / Break Fee to Sirtex in accordance with clause 10.3, within 5 Business Days of the date of termination the Deposit and the Deposit Interest must be paid out of the Deposit Account to the Bidders.

- (e) The obligations of the parties in this clause 5.3 survive the termination of this deed.
- (f) Without derogating from clauses 5.3(c) or 10.3, the parties acknowledge and agree that the primary purpose and intention of the Initial Deposit and the Second Deposit are to act as part payment of the Scheme Consideration and to evince the Bidders' intention and commitment to consummate the Transaction.

5.4. Conduct of business pre-implementation

- (a) From the date of this deed up until and including the Implementation Date, Sirtex must ensure that, except for any action which:
 - (i) is required or permitted by this deed or the Scheme;
 - (ii) has been Disclosed;
 - (iii) is required by law or a Government Agency;
 - (iv) has been consented to in writing by the Bidders (and the Bidders will consider in good faith, acting reasonably, any request for consent from Sirtex where Sirtex has provided reasonable details of the matter (including any material terms) in writing to the Bidders and must not unreasonably withhold or delay their consent to any such request); or

Sirtex and the other members of the Sirtex Group:

- (v) conduct their businesses in the ordinary course consistent with business plans and budgets Disclosed and otherwise in a manner generally consistent with the manner in which such businesses have been conducted in the 12 months prior to the date of this deed;
- (vi) use all reasonable endeavours to maintain and preserve their relationships with customers, suppliers, Government Agencies, landlords, licensors, licensees and others having business dealings with them, including by using reasonable endeavours to obtain their consent to the Transaction to the extent required under any material agreement with such third parties; and
- (vii) do not enter any lines of business or other activities in which members of the Sirtex Group are not engaged at the date of this deed;
- (viii) conduct their businesses and operations substantially in accordance with all applicable laws and regulations;
- (ix) where reasonably requested, consult with the Bidders and provide updates as to the progress of their business and operations;
- (x) do not settle the Class Action, or any part of it or take any other step that compromises the members of the Sirtex Group's rights in respect of the Class Action;
- (xi) do not incur any additional financial indebtedness by way of borrowings and other financial facilities including operating and finance leases (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the Sirtex Group, other than in the usual and ordinary course of business and consistent with past practice; and
- (xii) do not make any material change to the terms of employment of any director, executive or senior manager (except as required by law, publicly disclosed prior to

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the date of this deed or as provided in an existing contract in place as at the date of this deed).

- (b) For the avoidance of doubt, nothing in this clause 5.4 restricts the ability of Sirtex to respond to a Competing Proposal in accordance with clause 9.

5.5. Appointment and resignation of directors

On the Implementation Date, but subject to the Bidders having paid the Scheme Consideration in accordance with clause 4.3(b) and receipt by Sirtex of signed consents to act, Sirtex must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the Board; and
- (b) procure that each of the Outgoing Directors retires from the Board and provides written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Sirtex (provided that nothing in this clause 5.5 requires any Outgoing Director to forego any rights they may have under any deed of access and indemnity or policy of insurance),

in each case, in accordance with Sirtex's constitution, the Corporations Act and the ASX Listing Rules.

5.6. Board recommendation

- (a) Subject to clause 5.6(b), Sirtex must use its reasonable endeavours to procure that:
- (i) the Board unanimously recommends (including in the Scheme Booklet) that, in the absence of a superior proposal and subject to the Independent Expert concluding that the Transaction is in the best interests of Sirtex Shareholders, Sirtex Shareholders vote in favour of the Scheme at the Scheme Meeting; and
- (ii) the Scheme Booklet will include a statement by the Board to that effect and to the effect that each director of Sirtex will, in the absence of a superior proposal and subject to the Independent Expert concluding that the Transaction is in the best interests of Sirtex Shareholders, vote (or procure the voting) of all Sirtex Shares held or controlled by them in favour of the Scheme at the Scheme Meeting.
- (b) Sirtex must use its reasonable endeavours to procure that no director of Sirtex changes, withdraws or modifies their recommendation that Sirtex Shareholders vote in favour of the Scheme at the Scheme Meeting or their statement that they will vote (or procure the voting) of all Sirtex Shares held or controlled by them in favour of the Scheme at the Scheme Meeting or make a recommendation or statement that is inconsistent with such recommendation or statement, unless:
- (i) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Sirtex Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Sirtex Shareholders;
- (ii) Sirtex receives a Competing Proposal and the Board, acting in good faith, determines (after consultation with its financial advisers) that the Competing Proposal constitutes a Superior Proposal; or
- (iii) that director, acting in good faith, determines (after taking written advice from Sirtex's or their own external financial and legal advisers) that a failure by them or the Board to change, withdraw or modify such recommendation or make a recommendation or

statement that is inconsistent with it would be reasonably likely to constitute a breach of their fiduciary or statutory obligations.

5.7. Promotion of Scheme

During the Exclusivity Period, provided that the Board has not changed its recommendation in accordance with clause 5.6, Sirtex must use reasonable endeavours to procure that the senior executives of the Sirtex Group participate in efforts to promote the merits of the Scheme, including (as determined by Sirtex):

- (a) meeting with key Sirtex Shareholders;
- (b) communicating with Sirtex Group employees, customers, and suppliers; and
- (c) communicating with the public to promote the merits of the Scheme.

5.8. Conduct of Court proceedings

- (a) Sirtex and the Bidders (or, if applicable, the Bidders' Nominee) are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This deed does not give:
 - (i) Sirtex any right or power to give undertakings to the Court for or on behalf of the Bidders (or, if applicable, the Bidders' Nominee); or
 - (ii) the Bidders (or, if applicable, the Bidders' Nominee) any right or power to give undertakings to the Court for or on behalf of Sirtex,

in each case, without the relevant party's written consent.

5.9. China Grand Shareholder Approvals

China Grand must:

- (a) as soon as reasonably practicable after the date of this deed, issue the China Grand Announcement(s) in accordance with the requirements of the HKEX;
- (b) as soon as reasonably practicable after the date of this deed, prepare and file the draft China Grand Shareholders' Circular with the HKEX in accordance with the requirements of the HKEX Listing Rules;
- (c) include in the China Grand Shareholders' Circular a statement by the China Grand Board:
 - (i) unanimously recommending that China Grand Shareholders vote in favour of the resolutions to obtain the China Grand Shareholder Approvals;
 - (ii) that each China Grand Board member will, at the China Grand Shareholder Meeting, vote, or procure the voting of any China Grand Shares (as applicable) held by or on behalf of the China Grand Board Member at the time of the China Grand Shareholder Meeting in favour of the China Grand Resolutions;
- (d) consult with Sirtex, and consider and accept the reasonable comments of Sirtex, as to the content and presentation of the China Grand Shareholders' Circular and the China Grand Announcement(s), including:
 - (i) providing to Sirtex drafts of the China Grand Shareholders' Circular and the China Grand Announcement(s) for the purpose of enabling Sirtex to review and comment on the draft documents;

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- (ii) providing to Sirtex a revised draft of the China Grand Shareholders' Circular within a reasonable time before the final draft to be lodged with the HKEX is finalised and to enable Sirtex to review that draft before the date of its submission; and
- (iii) obtaining written approval from Sirtex for the form and content in which any information provided by Sirtex appears in the China Grand Shareholders' Circular and the China Grand Announcement(s);
- (e) promptly respond to requests for information or comments from the HKEX in relation to the China Grand Shareholders' Circular, the China Grand Announcement(s) (if applicable) or the Transaction at the earliest practicable time;
- (f) use all reasonable endeavours to ensure that Sirtex's Representatives have the right to be represented and make submissions if the HKEX raises any comments or queries regarding Sirtex or the Transaction in the China Grand Shareholders' Circular;
- (g) keep Sirtex promptly informed of any comments and/or matters (including but not limited to providing a copy of the HKEX's letters in connection with the China Grand Shareholders' Circular and the China Grand Announcement(s) (if applicable) which have been raised by the HKEX in relation to the China Grand Shareholders' Circular, the China Grand Announcement(s) or the Transaction, and uses reasonable endeavours to take into consideration in resolving such matters any issues raised by Sirtex;
- (h) use its best endeavours to have the China Grand Shareholders' Circular approved by the HKEX within 3 weeks after the date of filing of the initial draft China Grand Shareholders' Circular with the HKEX;
- (i) promptly prepare and file with the HKEX any amendment or supplement to the China Grand Shareholders' Circular so that any of the information contained therein would not include any misstatement of material fact or omit to state any material fact necessary to make the statements therein not misleading;
- (j) despatch the China Grand Shareholders' Circular to holders of China Grand Shares as soon as reasonably practicable and in accordance with the HKEX Listing Rules following the approval of the China Grand Shareholders' Circular by the HKEX; and
- (k) convene and hold the China Grand Shareholder Meeting to obtain the China Grand Shareholder Approvals as soon as reasonably practicable after the date of this deed, and in any event holds the China Grand Shareholder Meeting at least 10 Business Days prior to the scheduled date for the Scheme Meeting.

6. Representations and Warranties

6.1. Bidder representations

- (a) Each Bidder represents and warrants to Sirtex (in its own right and separately as trustee or nominee for each of the other Sirtex Parties) that each of the Bidder Representations and Warranties is true and correct.
- (a) Each Bidder Representation and Warranty is to be treated as a separate representation and warranty and is not limited by reference to any other representation or warranty or any other provision of this deed.

6.2. Sirtex's representations

- (a) Subject to clause 6.2(c), Sirtex represents and warrants to each Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Parties) that each of the Sirtex Representations and Warranties is true and correct.

- (b) Each Sirtex Representation and Warranty is to be treated as a separate representation and warranty and is not limited by reference to any other representation or warranty or any other provision of this deed.
- (c) Each Sirtex Representation and Warranty is subject to matters that:
- (i) are required to be done under this deed or the Scheme;
 - (ii) took place with the prior written consent of the Bidders;
 - (iii) have been Disclosed; or
 - (iv) as at the date of this deed are within the actual knowledge of the Bidders or the Bidders' Representatives.
- (d) The Bidders acknowledge that prior to the execution of this deed they conducted due diligence investigations in relation to the Sirtex Group and that as at the date of this deed they are not aware, as a consequence of having conducted those due diligence investigations, of any information or matter that would give them a right to terminate this deed or would constitute a breach of any Sirtex Representation and Warranty.

6.3. Timing of representations and warranties

Unless expressed to be given at a particular time (in which case it is given at that time), each Bidder Representation and Warranty and each Sirtex Representation and Warranty is given:

- (a) at the date of this deed; and
- (b) at all times up until 8am on the Second Court Date.

6.4. Survival of representations and warranties

Each Bidder Representation and Warranty and Sirtex Representation and Warranty:

- (a) is severable; and
- (b) survives the termination of this deed (but does not survive, and will be taken to have no further force or effect following, implementation of the Scheme).

7. Releases

7.1. Sirtex Parties

- (a) Each Bidder releases, and shall procure that each member of the Bidder Group releases, its rights against, and agrees with Sirtex that it will not make a Claim against, any Sirtex Party (other than Sirtex) in connection with:
- (i) any breach of any representation, covenant or warranty of Sirtex in this deed;
 - (ii) any disclosure made by any Sirtex Party that contains any statement which is false or misleading whether in content or by omission,

except to the extent that the relevant Sirtex Party has not acted in good faith or has engaged in wilful misconduct.

- (b) Clause 7.1(a) is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.

- (c) Sirtex receives and holds the benefit of this clause 7.1 as agent and trustee on behalf of each other Sirtex Party.

7.2. Bidder Parties

- (a) Sirtex releases, and shall procure that each member of the Sirtex Group releases, its rights against, and agrees with the Bidders that it will not make a Claim against, any Bidder Party (other than the Bidders and the Bidders' Nominee (if any)) in connection with:

- (i) any breach of any representation, covenant or warranty of a Bidder in this deed;
- (ii) any disclosure made by any Bidder Party that contains any statement which is false or misleading whether in content or by omission,

except to the extent that the relevant Bidder Party has not acted in good faith or has engaged in wilful misconduct.

- (b) Clause 7.2(a) is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.
- (c) The Bidders receive and hold the benefit of this clause 7.2 as agent and trustee on behalf of each other Bidder Party.

7.3. Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective, each Bidder undertakes in favour of Sirtex and each other person who is a Sirtex Party that it will:

- (i) for a period of not less than 7 years from the Implementation Date, ensure that the constitutions of Sirtex and each other member of the Sirtex Group continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its current and former directors and officers against any liability incurred by that person in their capacity as a director or officer of the company to any person other than a member of the Sirtex Group; and
- (ii) procure that Sirtex and each other member of the Sirtex Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for those directors and officers is maintained (with the same level of cover, and on the same terms, as maintained by the Sirtex Group at the date of this deed or with a higher level of cover or on terms more favourable to those directors and officers) for a period of not less than 7 years from the retirement date of each director and officer.

- (b) The undertakings contained in clause 7.3(a) are subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.
- (c) Sirtex receives and holds the benefit of clause 7.3(a) to the extent it relates to each director and officer of a member of the Sirtex Group as agent and trustee on behalf of each of them.
- (d) Each Bidder acknowledges that, notwithstanding any other provision of this deed, Sirtex may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to 7 years after the Implementation Date, and that any actions to facilitate that insurance or in connection therewith will not be a Prescribed Occurrence or breach any provision of this deed.

8. Public Announcements

8.1. Announcement of the Transaction

Immediately after the execution of this deed, Sirtex and the Bidders must issue public announcements in a form previously agreed to in writing between them. The Sirtex announcement must include:

- (a) a unanimous recommendation by the directors of Sirtex to Sirtex Shareholders consistent with that set out in clause 5.6(a)(i); and
- (b) a statement consistent with that set out in clause 5.6(a)(ii).

8.2. Other public announcements

Subject to clauses 8.3 and 8.4, any further public announcement or disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme may only be made with the approval by writing by each party (each party acting reasonably and in good faith) to the timing, form and content of that announcement or disclosure. Subject to any applicable law or rules of a relevant stock exchange, the parties agree to make all public announcements in relation to the Transaction outside the trading hours of ASX.

8.3. Required disclosure

Subject to clause 8.4, where a party is required by applicable law, the ASX Listing Rules or the HKEX Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other parties to the fullest extent possible before making the relevant disclosure and must give the other parties as much notice as reasonably practical.

8.4. Exclusions

The provisions of clauses 8.2 and 8.3 do not apply to:

- (a) any announcement, document or publication in connection with a Competing Proposal, Superior Proposal or withdrawal or modification of the Directors' recommendation that Sirtex Shareholders vote in favour of the Scheme at the Scheme Meeting or their statement that they will vote (or procure the voting) of all Sirtex Shares held or controlled by them in favour of the Scheme at the Scheme Meeting (or making of a recommendation or statement that is inconsistent with such recommendation or statement); or
- (b) any disclosure by the parties of any information concerning this deed or the transactions contemplated hereby in connection with any dispute between the parties regarding this deed, the Scheme or the transactions contemplated by this deed.

8.5. Statements on termination

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 8.2 and 8.3 apply to any such statements or disclosures (subject to clause 8.4).

9. Exclusivity

9.1. Termination of existing discussions

- (a) Sirtex warrants that, as at the time of execution of this deed, it is not, and must ensure that none of its Representatives are, in any negotiations or discussions, and that it has, and its Representatives have, ceased any existing negotiations or discussions, in respect of any

Competing Proposal (or which may reasonably be expected to lead to a Competing Proposal) with any person other than Varian Medical Systems, Inc. (in respect of which clause 3.5(a) applies).

- (b) Sirtex agrees that if, in the six months before the date of this deed, it has provided any confidential information to a Third Party (or to any current or former adviser to Sirtex or a Third Party, other than Sirtex's advisers in relation to the Transaction) in relation to a possible Competing Proposal (including the Varian Transaction), Sirtex has requested or will promptly request in writing the immediate return or destruction by the Third Party (and any relevant adviser) of such confidential information.

9.2. No shop restriction

During the Exclusivity Period, except with the prior written consent of the Bidders, Sirtex must ensure that neither it nor any of its Representatives directly or indirectly solicits, invites, encourages or initiates any Competing Proposal or any enquiries, negotiations or discussions 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.

9.3. No talk restriction

During the Exclusivity Period, except with the prior written consent of the Bidders, Sirtex must ensure that neither it nor any of its Representatives directly or indirectly enters into, continues or participates in negotiations or discussions with, or enters into any agreement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Sirtex; or
- (b) the Competing Proposal has been publicly announced.

9.4. No due diligence

Without limiting the general nature of clause 9.3, during the Exclusivity Period Sirtex must ensure that neither it nor any of its Representatives make available to any Third Party, or permit any Third Party, to receive any non public information relating to any member of the Sirtex Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

9.5. Exceptions

Clauses 5.1(a), 9.3 and 9.4 do not apply to the extent that they restrict Sirtex or the Board from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not solicited, invited, encouraged or initiated by Sirtex or its Representatives in contravention of clause 9.2) if the Board, acting in good faith, determines:

- (a) after consultation with its financial advisers, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps which the Board proposes to take; and
- (b) after receiving written advice from its legal advisers, that failing to respond to that Competing Proposal would be reasonably likely to constitute a breach of the Board's fiduciary or statutory obligations.

9.6. Normal provision of information

Nothing in this deed prevents Sirtex from:

- (a) providing information to its Representatives;

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- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
- (e) making presentations to, and to responding to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally.

9.7. Notice of unsolicited approach

During the Exclusivity Period, Sirtex must inform the Bidders if:

- (a) it is approached, directly or indirectly, by any Third Party to take any action of a kind referred to in clauses 9.3 or 9.4, and must disclose to the Bidders:
 - (i) the fact that such an approach has been made;
 - (ii) the identity of the Third Party who has made the approach, and the identity of the person making or proposing any Competing Proposal; and
 - (iii) all material terms of any Competing Proposal (to the extent known by Sirtex),
 as soon as reasonably practicable, and in any event by no later than 24 hours after such approach was received; or
- (b) it proposes to take any action of a kind referred to in clauses 9.3 or 9.4 (for the avoidance of doubt, such notice being given before the taking of the relevant action).

9.8. Matching right

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Sirtex:

- (a) must not enter into any legally binding agreement, arrangement or understanding pursuant to which a Third Party, Sirtex or both proposes or propose to undertake or give effect to a Competing Proposal; and
- (b) must use its reasonable endeavours to procure that none of its directors changes, withdraws or modifies their recommendation that Sirtex Shareholders vote in favour of the Scheme at the Scheme Meeting or otherwise makes a public statement to endorse or recommend a Competing Proposal,

unless:

- (c) the Competing Proposal is a Superior Proposal;
- (d) Sirtex has provided the Bidders with the material terms and conditions of the Competing Proposal;
- (e) Sirtex has given the Bidders at least 5 Business Days after the date of the provision of the information referred to in clause 9.8(d) to provide a matching or superior proposal to the terms of the Competing Proposal; and
- (f) the Bidders have not provided a matching or superior proposal to the terms of the Competing Proposal to the Board by the expiry of the 5 Business Day period referred to in clause 9.8(e).

Sirtex acknowledges and agrees that each successive modification of the material terms and conditions of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under clause 9.8 and accordingly Sirtex must comply with clauses 9.8(a) and 9.8(b) in respect of any new Competing Proposal unless clauses 9.8(c) to 9.8(f) (inclusive) apply.

9.9. Bidder counterproposal

If the Bidders propose to Sirtex, or announce amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the Competing Proposal (**Bidder Counterproposal**) by the expiry of the 5 Business Day period referred to in clause 9.8(e), Sirtex must procure that the Board considers the Bidder Counterproposal and if the Board, acting in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Sirtex Shareholders as a whole compared with the Competing Proposal, taking into account the material terms and conditions of the Bidder Counterproposal, then:

- (a) Sirtex and the Bidders must use their reasonable endeavours to agree the amendments to this deed and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
- (b) Sirtex must use its reasonable endeavours to procure that each of the directors of Sirtex recommends the Scheme (as modified by the Bidder Counterproposal) to Sirtex Shareholders in the absence of a superior proposal.

9.10. Legal advice

Sirtex and the Bidders acknowledge that they each have received legal advice on this deed and the operation of this clause 9.

10. Sirtex Reimbursement Fee and Bidder Facilitation / Break Fee

10.1. Background

This clause has been agreed in circumstances where:

- (a) the Bidders and Sirtex believe that the Scheme will provide significant benefits to the Bidders, Sirtex and their respective shareholders, and the Bidders and Sirtex acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Bidders and Sirtex will incur significant costs, including those set out in clause 10.6;
- (b) Sirtex will, at the request of the Bidders, terminate the Varian Transaction to allow the Bidders to pursue the Transaction;
- (c) had the Varian Transaction been implemented, Sirtex Shareholders would have received, in aggregate, an amount of cash consideration in consideration for the sale of their Sirtex Shares under the Varian Transaction that exceeded that market capitalisation of Sirtex, calculated by reference to each of the:
 - (i) closing price of Sirtex Shares on the last trading day prior to the announcement of the Varian Transaction;
 - (ii) volume weighted average price (calculated based on cumulative value traded on ASX and CHI-X divided by cumulative volume traded on ASX and CHI-X) over each of the periods of:
 - (A) 1 month ending on the last trading day prior to the announcement of the Varian Transaction;

- (B) 3 months ending on the last trading day prior to the announcement of the Varian Transaction; and
- (C) 6 months ending on the last trading day prior to the announcement of the Varian Transaction,

by not less than \$533 million, in each circumstance;

- (d) all conditions precedent to the Varian Transaction relating to Regulatory Approvals had been satisfied prior to the date of this deed;
- (e) had the Varian Transaction been implemented, it would have been completed, and Sirtex Shareholders would have been paid their consideration, no later than 31 July 2018;
- (f) this deed contains a number of Conditions Precedent requiring Regulatory Approvals to be obtained and no restraints being imposed that need to be satisfied for the Transaction to proceed;
- (g) the Bidders have advised Sirtex that they expect to be able to satisfy the Conditions Precedent;
- (h) Sirtex has requested that provision be made for the Bidder Facilitation / Break Fee to be payable to it as consideration for Sirtex entering into this deed (for the benefit of it and, indirectly, the Sirtex Shareholders), without which Sirtex would not have entered into this deed;
- (i) the Bidders have requested that provision be made for the Sirtex Reimbursement Fee to be payable to them, without which the Bidders would not have entered into this deed;
- (j) the boards of each party believe that it is appropriate and reasonable for each party to agree to the payments referred to in this clause to secure the other parties' entry into this deed and participation in the Scheme;
- (k) the parties consider that the payment of break fees is common in large global acquisitions;
- (l) each Bidder is a sophisticated investor, experienced in transactions of the nature of the Transaction;
- (m) the Bidder and its legal advisers are familiar with the payment of break fees in large global acquisitions and have previously been involved in acquisitions where a break fee has been agreed to be paid (including the acquisition of Smithfield Foods Inc. in the United States in 2013, where a break fee of US\$275 million was payable);
- (n) the Bidders agree that:
 - (i) Sirtex has a legitimate interest in receiving the Bidder Facilitation / Break Fee for the benefit of it and, indirectly, the Sirtex Shareholders on the express terms set out in this deed;
 - (ii) it is fair and reasonable for Sirtex to receive the Bidder Facilitation / Break Fee for the benefit of it and, indirectly, the Sirtex Shareholders on the express terms set out in this deed; and
 - (iii) it is appropriate for China Grand to agree to the payment of the Bidder Facilitation / Break Fee to secure Sirtex's entry into this deed and participation in the Scheme; and
- (o) each party has received legal advice on this deed and the operation of this clause.

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10.2. Payments by Sirtex to the Bidders

Subject to clauses 10.4, 10.5, 10.7 and 10.8, Sirtex agrees to pay the Sirtex Reimbursement Fee to the Bidders without withholding or set off if the Scheme does not proceed because:

(a) **Competing Proposal:** during the Exclusivity Period a Competing Proposal is announced by a Third Party and, within 12 months of such announcement, the Third Party or an associate of the Third Party:

- (i) completes in all material respects a transaction of the kind referred to in paragraph (b), (c) or (d) of the definition of Competing Proposal; or
- (ii) without limiting clause 10.2(a)(i) above, has a relevant interest in at least 50% of Sirtex Shares,

except where the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Sirtex Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Sirtex Shareholders (except in circumstances where the Independent Expert reaches that conclusion or makes that change as a result of a Competing Proposal having been announced or made public);

(b) **change of recommendation:** at any time on or before the Scheme Meeting:

- (i) a majority of the members of the Board make a public statement withdrawing or adversely changing or modifying their recommendation that Sirtex Shareholders vote in favour of the Scheme at the Scheme Meeting or their statement that they will vote (or procure the voting) of all Sirtex Shares held or controlled by them in favour of the Scheme at the Scheme Meeting (including by attaching qualifications to such recommendation or statement) or make a recommendation or statement that is inconsistent with such recommendation or statement; or
- (ii) without limiting the foregoing, a majority of members of the Board make a public statement indicating that they no longer support the Scheme or that they support a Competing Proposal,

excluding any member of the Board who withdraws their recommendation:

- (iii) due to the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Sirtex Shareholders, or adversely changing its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Sirtex Shareholders (except in circumstances where the Independent Expert reaches that conclusion or makes that change as a result of a Competing Proposal having been announced or made public); or
- (iv) in circumstances where Sirtex is entitled to terminate this deed in accordance with clause 11.1(a) or clause 11.1(c);

(c) **Independent Expert:** Sirtex validly terminates this deed in accordance with clause 11.1(g) due to the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Sirtex Shareholders, or adversely changing its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Sirtex Shareholders, where the reason for that conclusion or change is a Competing Proposal; or

(d) **termination by the Bidders:** the Bidders validly terminate this deed in accordance with clause 11.1(b) or clause 11.1(d).

10.3. Payment by China Grand to Sirtex

Subject to clauses 10.4, 10.5 and 10.8, China Grand agrees to pay the Bidder Facilitation / Break Fee to Sirtex (for the benefit of Sirtex and, indirectly, the Sirtex Shareholders) without withholding or set off if:

- (a) **Scheme not Effective by End Date due to failure to satisfy certain Conditions Precedent:** each of the following occur:
- (i) the Scheme has not become Effective by the End Date; and
 - (ii) any of the Conditions Precedent in clause 3.1(c) (FIRB approval), clause 3.1(d) (US anti-trust clearance), clause 3.1(e) (no restraints) and clause 3.1(i) (no Bidder Insolvency Event) has not been satisfied or waived in accordance with clause 3.6 by the End Date; or
- (b) **termination due to failure to satisfy certain Conditions Precedent:** any event occurs which would, or in fact does, prevent any of the Conditions Precedent in clause 3.1(c) (FIRB approval), clause 3.1(d) (US anti-trust clearance), clause 3.1(e) (no restraints) and clause 3.1(i) (no Bidder Insolvency Event) being satisfied and that Condition Precedent is not waived by Sirtex or the Bidder or both (as applicable) in accordance with clause 3.6; or
- (c) **withdrawal of CFIUS Notice:** the parties agree in writing to voluntarily withdraw the CFIUS Notice and this deed is terminated; or
- (d) **termination by Sirtex:** Sirtex validly terminates this deed in accordance with clause 11.1(a) or clause 11.1(c).

10.4. No amount payable if Scheme becomes Effective

- (a) Notwithstanding the occurrence of any event in clause 10.2 or clause 10.3, if the Scheme becomes Effective:
- (i) no amount is payable by any party under those clauses; and
 - (ii) if any amount has already been paid under those clauses it must be refunded by the recipient within 20 Business Days after the Scheme becomes Effective.
- (b) China Grand can only ever be liable to pay the Bidder Facilitation / Break Fee once.
- (c) Sirtex can only ever be liable to pay the Sirtex Reimbursement Fee once.

10.5. Timing of payment

- (a) If the Sirtex Reimbursement Fee is payable under clause 10.2, Sirtex must pay the Sirtex Reimbursement Fee to the Bidders without withholding or set off within 20 Business Days of receipt of a demand for payment from the Bidders.
- (b) If the Bidder Facilitation / Break Fee is payable under clause 10.3, China Grand must pay the Bidder Facilitation / Break Fee to Sirtex without withholding or set off within 5 Business Days of the date of termination of this deed.

10.6. Nature of payment

The amount payable by a party to another party under clause 10.2 or clause 10.3 is an amount payable to that other party (and indirectly for the benefit of that other party's shareholders) for, among other matters:

- (a) advisory costs;

- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of that other party's management from conducting that other party's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred in pursuing the Transaction or in not pursuing alternative acquisitions or strategic initiatives which could have developed to further that other party's business and objectives;
- (f) damage to that other party's reputation associated with a failed transaction and the implications of that damage to that other party's business; and
- (g) in the case of Sirtex and the Sirtex Shareholders:
 - (i) agreeing to propose and implement the Scheme on and subject to the terms of this deed (including by terminating the Varian Transaction in accordance with clause 3.1(a));
 - (ii) the loss of the opportunity to implement the Varian Transaction; and
 - (iii) the obligations of Sirtex set out in clause 12.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2 or clause 10.3 (as applicable).

10.7. Limitation of liability

- (a) Notwithstanding any other provision of this deed but subject to clauses 10.7(b) and 10.8:
 - (i) the maximum liability of:
 - (A) Sirtex to the Bidders under or in connection with this deed including in respect of any breach of this deed will be the Sirtex Reimbursement Fee and in no event will the aggregate liability of Sirtex under or in connection with a breach of this deed exceed an amount equal to the Sirtex Reimbursement Fee;
 - (B) the Bidders to Sirtex under or in connection with this deed including in respect of any breach of this deed will be the Bidder Facilitation / Break Fee and any amounts payable by them in accordance with clauses 3.3(e) and 3.5(b) and in no event will the aggregate liability of the Bidders under or in connection with a breach of this deed exceed an amount equal to the Bidder Facilitation / Break Fee and any amounts payable by them in accordance with clauses 3.3(e) and 3.5(b); and
 - (ii) the payment by:
 - (A) Sirtex to the Bidders of the Sirtex Reimbursement Fee represents the sole and absolute amount of liability of Sirtex to the Bidders under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Sirtex to the Bidders in connection with this deed; and
 - (B) China Grand to Sirtex of the Bidder Facilitation / Break Fee and any amounts payable by the Bidders in accordance with clauses 3.3(e) and 3.5(b) represents the sole and absolute amount of liability of the Bidders to Sirtex

under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidders to Sirtex in connection with this deed.

- (b) Nothing in clause 10.7(a) in any way:
- (i) prevents a party (in its own right or as agent or trustee on behalf of any person contemplated by this deed) from seeking orders from a court of competent jurisdiction for the specific performance by another party of any obligations under this deed;
 - (ii) extinguishes or limits the liability of a party for any breach of this deed arising from criminal acts or fraud by that party or a Representative of that party; or
 - (iii) limits the liability of the Bidders to Sirtex under or in connection with clauses 3.3(e) and 3.5(b) of this deed.

10.8. Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the amount payable under clause 10.2 or clause 10.3:

- (i) is unlawful or would if performed be, unlawful;
- (ii) involves a breach of the duties of the Board; or
- (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then the relevant party's obligation to pay the applicable amount or part of the amount payable under clause 10.2 or clause 10.3 (as relevant) does not apply and if another party has received any such part of the payment due under clause 10.2 or clause 10.3 (as relevant) it must refund it within 20 Business Days of such final determination.

- (b) The parties must:
- (i) not make or cause or permit to be made any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.8; and
 - (ii) use their best endeavours to defend the enforceability of the obligations of the parties to pay the applicable amount or part of the amount payable under clause 10.2 or clause 10.3 (as relevant) in any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in clause 10.8(a) and appeal any determination referred to in clause 10.8(a), to the fullest extent possible except to the extent that:
 - (A) the parties otherwise agree in writing; or
 - (B) Queen's Counsel or Senior Counsel representing that party in relation to the Scheme indicates in writing that, in their opinion, defending those obligations or restrictions, or appealing such determination, would likely have less than a reasonable prospect of success.

10.9. Survival

The obligations of the parties in this clause 10 survive the termination of this deed.

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11. Termination

11.1. Termination events

This deed may be terminated:

- (a) **material breach of deed by Bidders:** by Sirtex at any time prior to 8am on the Second Court Date, if any Bidder is in material breach of a term of this deed (other than a breach of representation and warranty, which is dealt with in clause 11.1(c)), taken in the context of the Scheme as a whole, provided that Sirtex has, if practicable, given notice to the Bidders setting out the relevant circumstances and the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at 8am on the Second Court Date) after the time such notice is given. For the purposes of this clause 11.1(a) and without limitation, any breach by the Bidders of clauses 3.2, 3.3, 5.2(b), 5.2(c) or 5.9 will be considered to be a material breach by the Bidders of a term of this deed taken in the context of the Scheme as a whole;
- (b) **material breach of deed by Sirtex:** by the Bidders at any time prior to 8am on the Second Court Date, if Sirtex is in material breach of a term of this deed (other than a breach of representation and warranty, which is dealt with in clause 11.1(d)), taken in the context of the Scheme as a whole, provided that the Bidders have, if practicable, given notice to Sirtex setting out the relevant circumstances and the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at 8am on the Second Court Date) after the time such notice is given;
- (c) **material breach of Bidder Representations and Warranties:** by Sirtex at any time prior to 8am on the Second Court Date if the Bidder Representations and Warranties are not true and accurate in all material respects, provided that:
- (i) Sirtex has given written notice to the Bidders setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
 - (ii) the relevant breach or circumstances have not been remedied within 10 Business Days after such notice is given (or any shorter period ending at 8am on the Second Court Date); and
 - (iii) the relevant breach of the Bidder Representations and Warranties is material in the context of the Scheme taken as a whole (and for these purposes and without limitation any breach of the Bidder Representation and Warranty set out in paragraphs (o) and (w) of Schedule 1 will be deemed to be material in the context of the Scheme taken as a whole);
- (d) **material breach of Sirtex Representations and Warranties:** by the Bidders at any time prior to 8am on the Second Court Date if the Sirtex Representations and Warranties are not true and accurate in all material respects, provided that:
- (i) the Bidders have given written notice to Sirtex setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
 - (ii) the relevant breach or circumstances have not been remedied within 10 Business Days after such notice is given (or any shorter period ending at 8am on the Second Court Date); and
 - (iii) the relevant breach of the Sirtex Representations and Warranties is material in the context of the Scheme taken as a whole;
- (e) **change of recommendation of Board:** by the Bidders if a majority of the members of the Board have changed, withdrawn or modified their recommendation that Sirtex Shareholders vote in favour of the Scheme at the Scheme Meeting as permitted under clause 5.6;

- (f) **recommendation of Competing Proposal:** by Sirtex if, at any time before 8am on the Second Court Date, a majority of the Board publicly recommends a Competing Proposal that is a Superior Proposal, and provided that the Competing Proposal was not connected with a breach of Sirtex's obligations in clause 9;
- (g) **Independent Expert:** by Sirtex if the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Sirtex Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Sirtex Shareholders;
- (h) **failure of Conditions Precedent:** in accordance with and pursuant to clause 3.8(a); and
- (i) **by agreement:** if agreed to in writing by Sirtex and the Bidders.

11.2. Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other parties stating that it terminates this deed.

11.3. Effect of termination

If this deed is terminated by any party, or if this deed otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this deed, other than the obligations set out in this clause and in clauses 7, 8, 10 and 12 to 17 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other parties, provided that nothing in this clause releases any party from liability for any pre-termination breach of this deed.

12. Exclusive China Commercialisation Rights

- (a) If this deed is validly terminated in circumstances where Sirtex is entitled to payment of the Bidder Facilitation / Break Fee pursuant to clause 10.3(a) or clause 10.3(b) (other than as a result of the Condition Precedent in clause 3.1(i) (No Bidder Insolvency Event) not being satisfied or waived in accordance with clause 3.6) or clause 10.3(c) and Sirtex has received payment of the Bidder Facilitation / Break Fee the parties acknowledge and agree as follows:
 - (i) the parties agree to use their respective best endeavours to finalise the entry into a formal legal agreement that governs the grant by Sirtex of exclusive commercialisation rights in favour of the Bidders for the China market including but not limited to any one or more of distribution rights, cooperation rights and licensing rights in respect of intellectual property; and
 - (ii) the formal legal agreement will:
 - (A) subject to agreement on terms, be entered into as soon as practicable after the date of this deed, with each party undertaking to act in good faith with respect to those negotiations but recognising that it is entitled to pursue its own best interests;
 - (B) be conditional only on this deed being validly terminated in circumstances where Sirtex is entitled to payment of the Bidder Facilitation / Break Fee pursuant to clause 10.3(a) or clause 10.3(b) (other than as a result of the Condition Precedent in clause 3.1(i) not being satisfied or waived in accordance with clause 3.6) or clause 10.3(c) and Sirtex has received payment of the Bidder Facilitation / Break Fee; and
 - (C) otherwise be on terms agreed between the parties; and

- (iii) if, despite the parties' respective best endeavours and good faith approach to the negotiations, they cannot reach agreement on terms for the formal legal agreement contemplated by clause 12(a)(i) within 40 Business Days after the date of this deed, Sirtex agrees that it will not enter into any agreement (whether formal or informal) with a Third Party with respect to the grant by Sirtex of commercialisation rights for the China market at any time during the period of 3 years following the date of termination of this deed in the circumstances set out in clause 12(a)(ii)(B) without first offering to enter into an agreement with either or both Bidders on terms no less favourable to it or them (as applicable) than those proposed to be entered into with the Third Party (**China Right of First Refusal**). The China Right of First Refusal must be accepted by either or both Bidders within 20 Business Days of being notified by Sirtex in writing of the material terms of its proposed agreement with the Third Party, failing which the offer lapses.
- (b) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any of the obligations of, or restrictions applying to, any party under clause 12(a):
- (i) is unlawful or would if performed be, unlawful;
 - (ii) involves a breach of the duties of the Board; or
 - (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,
- then the relevant party's obligation to perform that obligation or restriction under clause 12(a) (as relevant) does not apply.
- (c) The parties must:
- (i) not make or cause or permit to be made any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in clause 12(b);
 - (ii) use their best endeavours to defend the enforceability of the obligations of, and restrictions applying to, the parties under clause 12(a) in any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in clause 12(b), and appeal any determination referred to in clause 12(b), to the fullest extent possible except to the extent that:
 - (A) the parties otherwise agree in writing; or
 - (B) Queen's Counsel or Senior Counsel representing that party in relation to the Scheme indicates in writing that, in their opinion, defending those obligations or restrictions, or appealing such determination, would likely have less than a reasonable prospect of success.
- (d) This clause 12 survives the termination of this deed.

13. Confidentiality

13.1. Confidentiality Deed

Sirtex and the Bidders acknowledge and agree that they continue to be bound by the Confidentiality Deeds after the date of this deed.

13.2. Survival of obligations

The rights and obligations of the parties under the Confidentiality Deeds survive termination of this deed.

13.3. Undertaking and acknowledgement

Each Bidder:

- (a) undertakes to Sirtex that, during the Exclusivity Period, it will not give Sirtex a notification in accordance with clause 6.4(a)(ii) of its Confidentiality Deed; and
- (b) acknowledges and agrees that any such notification given during the Exclusivity Period will be deemed not to have been given until the expiry of the Exclusivity Period.

14. GST

14.1. Definitions and interpretation

For the purposes of this clause:

- (a) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

14.2. GST exclusive

Unless this deed expressly states otherwise, all consideration to be provided under this deed is exclusive of GST.

14.3. Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this deed, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

14.4. Adjustment events

If an adjustment event arises for a supply made in connection with this deed, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

14.5. Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this deed which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 14.3 will apply to the reduced payment.

14.6. No merger

This clause 14 will not merge on termination of this deed.

15. Duty, Costs and Expenses**15.1. Stamp duty and registration fees**

The Bidders:

- (a) must pay all stamp duties, registration fees and similar taxes payable or assessed as being payable in connection with this deed or the Scheme or the steps to be taken under this deed or the Scheme (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnify Sirtex against any liability incurred by Sirtex arising from a failure to comply with clause 15.1(a).

15.2. Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

16. Notices**16.1. Form**

- (a) Unless this deed expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing and signed by the sender (if an individual) or a person duly authorised by the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in clause 16.3 (or, if the recipient has notified otherwise, then marked for attention in the way last notified).
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

16.2. Delivery

- (a) Communications must be:
 - (i) delivered by hand to the address of the party referred to in clause 16.3;
 - (ii) sent by regular ordinary post (airmail if sent from one country to another) to the address of the party referred to in clause 16.3; or
 - (iii) sent by email to the email address of the party referred to in clause 16.3.
- (b) If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

16.3. Notice details

The notice details of:

- (a) Sirtex are:

Name: Sirtex Medical Limited
Address: Level 33, 101 Miller Street, North Sydney NSW 2060, Australia
Attention: Andrew McLean
Email: andrew.mclean@sirtex.com

With a copy (for information purposes only) to:

Name: Watson Mangioni
Address: Level 23, 85 Castlereagh Street, Sydney NSW 2000, Australia
Attention: Chris Clarke
Email: cclarke@wmlaw.com.au

(b) CDH Genetech are:

Name: CDH Genetech Limited
Address: 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong
Attention: Alex Minfeng WU
Email: wuminfeng@cdhfund.com

With a copy (for information purposes only) to:

Name: MinterEllison
Address: Level 23, Rialto Towers, 525 Collins Street, Melbourne VIC 3000, Australia
Attention: Alberto Colla
Email: alberto.colla@minterellison.com

(c) China Grand are:

Name: China Grand Pharmaceutical and Healthcare Holdings Limited
Address: Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong
Attention: Rocky Shao
Email: rocky.shao@chinagrandpharm.com

With a copy (for information purposes only) to:

Name: MinterEllison
Address: Level 23, Rialto Towers, 525 Collins Street, Melbourne VIC 3000, Australia
Attention: Alberto Colla
Email: alberto.colla@minterellison.com

or as specified to the sender by the relevant party by notice.

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16.4. When effective

Communications take effect from the time they are received or taken to be received under clause 16.5 (whichever happens first) unless a later time is specified in the communication.

16.5. When taken to be received

Subject to clause 16.6, communications are taken to be received:

- (a) if delivered by hand, when delivered;
- (b) if sent by post, 5 Business Days after posting (if posted to an address in the same country) or 10 Business Days after posting (if posted to an address in a different country);
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

16.6. Receipt outside business hours

Despite anything else in this clause 16, if communications are received or taken to be received under clause 16.5 after 5pm on a working day or on a day that is not a working day, they are taken to be received at 9am on the next working day. For the purposes of this clause, "working day" means 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).

17. General**17.1. Variation**

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

17.2. Assignment

Subject to clause 2.2, a party may not assign, novate, charge, encumber or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other parties.

17.3. Entire agreement

This deed and the Confidentiality Deed contain the entire agreement between the parties with respect to their subject matter. They set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

17.4. Counterparts

- (a) This deed may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the deed.
- (b) This deed may be executed on the basis of an exchange of facsimile copies or electronic images (such as scanned copies or digital photos), and execution of this deed by such means is a valid and sufficient execution.

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17.5. Further action

Each party will do all things and execute all further documents necessary to give full effect to this deed.

17.6. No merger

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

17.7. Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

17.8. No third party beneficiary

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed, express or implied, is intended to or shall confer on any other person, other than the Bidder Parties and the Sirtex Parties (including, for the avoidance of doubt, each member of the Board), to the extent set forth in clause 6 and clause 7, any third party beneficiary rights.

17.9. Waivers

- (a) 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 by any party does 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.
- (b) Any waiver or consent given by any party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

17.10. Consents

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

17.11. 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 deed, except for representations or inducements expressly set out in this deed 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 deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges that it has performed its own searches, enquiries, investigations and evaluations prior to entering into this deed and has formed its own views on the

Transaction, with no targets, projections, forecasts or other forward looking statements having been relied on by that party.

- (c) Each party acknowledges and confirms that it does not enter into this deed 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 deed.

17.12. Rules of construction

No term or condition of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or a provision of it.

17.13. Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts.

17.14. Service of process

- (a) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 16.
- (b) Each Bidder irrevocably appoints MinterEllison of Level 23, Rialto Towers, 525 Collins St, Melbourne VIC 3000 Australia (attention: Alberto Colla) as its process agent to receive any document in any action in connection with this deed and agrees that failure by a process agent to notify the Bidder of any document in an action in connection with this deed does not invalidate the action concerned.
- (c) If MinterEllison ceases to be able to act as such, each Bidder agrees to appoint a new process agent in Australia and deliver to Sirtex within 1 Business Day a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed. Each Bidder must inform Sirtex in writing of any change in the address of its process agent within 1 Business Day of the change.

Schedule 1

Bidder Representations and Warranties

- (a) **status:** each Bidder and the Bidders' Nominee (if any) has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **power:** each Bidder has power to enter into this deed, to comply with its obligations under it and exercise its rights under it;
- (c) **corporate authorisations:** each Bidder has taken all necessary corporate action to authorise its entry into and its performance of this deed and to carry out the transactions contemplated by this deed;
- (d) **no contravention:** the entry by each Bidder into, its compliance with its obligations and the exercise of its rights under, this deed do not and will not conflict with:
- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on it;
- (e) **authorisations:** each Bidder has in full force and effect each authorisation necessary for it to enter into this deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (f) **validity of obligations:** the obligations of each Bidder under this deed are valid and binding and are enforceable against it in accordance with its terms;
- (g) **reliance:** the Bidder Information provided to Sirtex for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Sirtex and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (h) **Bidder Information:** the Bidder Information provided in accordance with this deed and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (i) **information provided to the Independent Expert:** all information provided by each Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (j) **opinions:** any statement of opinion or belief contained in the Bidder Information or provided by any Bidder to the Independent Expert is honestly held and there are reasonable grounds for holding the opinion or belief;
- (k) **insolvency event:** no member of the Bidder Group is subject to, or has suffered, an Insolvency Event;
- (l) **Sirtex Shareholding:** neither Bidder nor any of its respective associates has a relevant interest in any Sirtex Shares;
- (m) **no dealing with Sirtex Shareholders:** neither Bidder nor any of its respective associates has any agreement, arrangement or understanding with any Sirtex Shareholder under which

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that Sirtex Shareholder (or an associate of that Sirtex Shareholder) would be entitled to receive consideration for their Sirtex Shares different from the Scheme Consideration or under which the Sirtex Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;

- (n) **reasonable basis:** each Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy the Bidders' obligations to pay the Scheme Consideration in accordance with their obligations under this deed, the Scheme and the Deed Poll;
- (o) **Regulatory Approvals:**
- (i) no Regulatory Approval is required to be obtained by either Bidder or the Bidders' Nominee in order for any of them to execute, deliver and perform this deed, the Deed Poll, the Scheme, the Commitment Letters and the Bidder Facility Agreements other than those Regulatory Approvals set out in clauses 3.1(c) and 3.1(d), and no regulatory action of any nature has been taken that would prevent or restrict their ability to fulfil their obligations under this deed, the Deed Poll, the Scheme, the Commitment Letters and the Bidder Facility Agreements;
 - (ii) no Regulatory Approval is required to be obtained by China Grand Enterprises, Inc. in order for it to execute, deliver and perform its obligations as a guarantor under the China Grand Debt Commitment Letter or the China Grand Facility Agreements and no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under the China Grand Debt Commitment Letter or the China Grand Facility Agreements;
 - (iii) no Regulatory Approval is required to be obtained by Outwit Investments Limited in order for it to execute, deliver and perform its obligations as a guarantor under the China Grand Debt Commitment Letter or the China Grand Facility Agreements and no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under the China Grand Debt Commitment Letter or the China Grand Facility Agreements;
 - (iv) no Regulatory Approval is required to be obtained by any other party to the China Grand Debt Commitment Letter in order for that party to execute, deliver and perform the China Grand Debt Commitment Letter or the China Grand Facility Agreements; and
 - (v) without prejudice to the warranties set out in paragraph (o)(i) to (o)(iv) of this Schedule 1, each Bidder has undertaken an analysis of all relevant information, including obtaining legal advice from reputable international law firms experienced in transactions of the nature of the Transaction, in order to duly consider and confirm the accuracy of the warranties set out in paragraphs (o)(i) to (o) (iv) of this Schedule 1 before entering into this deed;
- (p) **Bidders' Nominee:** the Bidders' Nominee is or will be an Agreed SPV;
- (q) **validity of Commitment Letters:** each Commitment Letter has been duly executed by the parties to it and constitutes legally binding obligations of those parties that are enforceable in accordance with its terms and no Commitment Letter has been terminated;
- (r) **accuracy of Commitment Letters:** the statements, confirmations, representations and warranties given by the Bidder Parties in the Commitment Letters are true and accurate and not misleading or deceptive;
- (s) **no amendment of Commitment Letters:** as a continuing obligation, without the prior written consent of Sirtex:

- (i) no Bidder Party will amend any Commitment Letter in any respect which will, or is reasonably likely to, prejudice the Bidders' ability to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll; and
- (ii) neither Bidder will waive any of its rights under the Equity Commitment Letter in any respect which will, or is reasonably likely to, prejudice the Bidders' ability to pay the Scheme Consideration in accordance with their obligations under this deed, the Scheme and the Deed Poll;
- (t) **conditions of Commitment Letters:** other than conditions relating to the satisfaction or waiver of the Conditions Precedent, all conditions to the payment of funds to each Bidder under the Commitment Letters applicable to it are fully satisfied, or will be fully satisfied or waived by the date on which the Bidders are required to satisfy their obligations to pay the Scheme Consideration in accordance with their obligations under this deed, the Scheme and the Deed Poll;
- (u) **Bidder Facility Agreements:** on each date from the date on which each Bidder Facility Agreement is entered into until 8:00am on the Implementation Date:
- (i) that Bidder Facility Agreement has been duly executed by the parties to it and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with its terms; and
- (ii) without the prior written consent of Sirtex, no Bidder Party will amend or waive any of its rights under, or agree to amend or waive any of its rights under, that Bidder Facility Agreement in any respect which will, or is reasonably likely to, prejudice the Bidder's ability to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
- (v) **no government ownership:** other than as disclosed in writing by the Bidder to Sirtex at least 5 Business Days prior to the date of this deed in a notice expressly referring to this paragraph (v) of this Schedule 1, no Government Agency nor any corporation or other entity owned or controlled, in whole or in part by a Government Agency, nor any other person controlled by or acting on behalf of a Government Agency (collectively, **Government Actors**):
- (i) owns, either directly or indirectly, any interest in any of the Bidder Entities;
- (ii) has contingent interests therein (for example, without limitation, through lending transactions or convertible voting instruments, etc.);
- (iii) has the ability, whether or not exercised, and whether or not acting alone or in concert with one or more other such Government Actors, to exercise control over any Bidder Entity, or to appoint principal officers or members of the board of directors or management of any Bidder Entities; or
- (iv) has any other rights or powers with respect to the control of any Bidder Entity (for example, without limitation, a "golden share" or otherwise) whether pursuant to a contract, shareholders agreement, statute, regulation or otherwise.
- (w) **approvals and consents:**
- (i) other than the China Grand Shareholder Approvals, neither the Bidders nor the Bidders' Nominee are required by any law, regulation, rule or otherwise to obtain the approval or consent of its shareholders, governmental authority or regulatory authority to authorise or permit it to execute, deliver and perform this deed, the Deed Poll, the Scheme and the Commitment Letters; and

- (ii) the China Grand Shareholder Approvals will be obtained prior to the Scheme Meeting;
- (x) **validity of Deeds of Undertaking:** each Deed of Undertaking has been duly executed by the party to it and constitutes legally binding obligations of that party that are enforceable in accordance with its terms and no Deed of Undertaking has been terminated;
- (y) **accuracy of Deeds of Undertaking:** the statements, confirmations, representations and warranties given in each Deed of Undertaking by the party to it are true and accurate and are not misleading or deceptive;
- (z) **no amendment of Deeds of Undertaking:** as a continuing obligation, without the prior written consent of Sirtex, no party to a Deed of Undertaking will amend, or waive any of its rights or obligations under, or agree to amend or waive any of its rights or obligations under, any Deed of Undertaking in any respect;
- (aa) **no approvals or consents for Deeds of Undertaking:** none of the parties giving the Deeds of Undertaking are required by any law, regulation, rule or otherwise to obtain the approval or consent of its shareholders, Government Agency or other regulatory authority to authorise or permit it to execute, deliver and perform the Deed of Undertaking;
- (bb) **no voting exclusions:** none of the parties giving the Deeds of Undertaking is, or will be, required to abstain from voting on, or otherwise excluded from voting on, the China Grand Shareholder Approvals; and
- (cc) **disclosure:** the documents and information provided by each Bidders and its Representatives to Sirtex and its Representatives prior to the date of this deed in relation to the Bidder Entities and the proposed funding structure for the Transaction (including the Commitment Letters and the Deeds of Undertaking) are true and accurate and are not misleading or deceptive.

Schedule 2

Sirtex Representations and Warranties

- (a) **status:** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **power:** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **corporate authorisations:** Sirtex has taken all necessary corporate action to authorise the entry into and the performance of this deed and to carry out the transactions contemplated by this deed;
- (d) **no contravention:** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on it;
- (e) **authorisations:** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (f) **validity of obligations:** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (g) **reliance:** the Sirtex Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (h) **Sirtex Information:** the Sirtex Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (i) **information provided to the Independent Expert:** all information provided by Sirtex to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (j) **opinions:** any statement of opinion or belief contained in the Sirtex Information or provided by Sirtex to the Independent Expert is honestly held and there are reasonable grounds for holding the opinion or belief;
- (k) **compliance:** the Sirtex Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
- (l) **insolvency event:** no member of the Sirtex Group is subject to, or has suffered, an Insolvency Event;

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- (m) **capital structure:** Sirtex's capital structure (including all issued securities) as at the date of this deed is as set out in Schedule 4 and, as at the date of this deed, it has not issued or agreed to issue any other securities, options, performance rights or instruments which are still outstanding or which may convert into Sirtex Shares other than as set out in Schedule 4;
- (n) **continuous disclosure:** Sirtex has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1. There is no information that Sirtex is withholding pursuant to a carve-out under ASX Listing Rule 3.1 that has not been disclosed to the Bidder or its Representatives; and
- (o) **disclosure:** the Disclosure Materials were prepared, compiled and made available to Bidder and its Representatives in good faith and to the best of Sirtex's knowledge the Disclosure Materials are not misleading or deceptive in any material respect (whether by way of omission or otherwise).

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Schedule 3

Prescribed Occurrences

- (a) Sirtex converts all or any of its shares into a larger or smaller number of shares;
- (b) a member of the Sirtex Group resolves to reduce its share capital in any way;
- (c) a member of the Sirtex Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Sirtex Group issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option, other than the issue of up to 780,657 fully paid ordinary shares to the holders as at the date of this deed of Sirtex Rights in accordance with the terms of those Sirtex Rights (including as a result of an exercise of a discretion vested in Sirtex or the Board in those terms);
- (e) a member of the Sirtex Group issues, or agrees to issue, convertible notes;
- (f) a member of the Sirtex Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) a member of the Sirtex Group grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property;
- (h) a member of the Sirtex Group pays, or agrees to pay, any of its directors, officers, employees or contractors a termination or retention payment (other than in accordance with contractual arrangements in effect on the date of this deed which have been Disclosed);
- (i) a member of the Sirtex Group resolves to be wound up;
- (j) a liquidator or provisional liquidator of a member of a member of the Sirtex Group is appointed;
- (k) a court makes an order for the winding up of a member of the Sirtex Group;
- (l) an administrator of a member of the Sirtex Group is appointed under sections 436A, 436B or 436C of the Corporations Act;
- (m) a member of the Sirtex Group executes a deed of company arrangement; or
- (n) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of a member of the Sirtex Group.

Schedule 4**Sirtex Capital Structure**

Security	Number on issue at date of this deed
Sirtex Shares	55,773,045
Sirtex Rights	780,657

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EXECUTED by the parties as a deed:

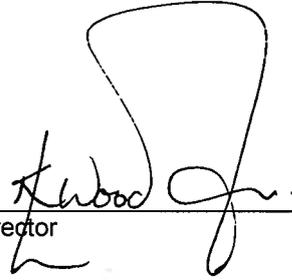
SIGNED, SEALED & DELIVERED by)
Sirtex Medical Limited)
(ABN 35 078 166 122))
in accordance with section 127 of the)
Corporations Act:)



Director/Secretary

ANDREW McLEAN

Name (please print)



Director

KATHERINE WOODTHORPE

Name (please print)

SIGNED, SEALED & DELIVERED by)
CDH Genetech Limited)
by being signed, sealed and delivered by)
its duly authorised representative in the)
presence of:)

Witness

Name (please print)

Authorised Representative

Name (please print)

SIGNED, SEALED & DELIVERED by)
China Grand Pharmaceutical and)
Healthcare Holdings Limited)
by being signed, sealed and delivered by)
its duly authorised representative in the)
presence of:)

Witness

Name (please print)

Authorised Representative

Name (please print)

For personal use only

EXECUTED by the parties as a deed:

SIGNED, SEALED & DELIVERED by)
Sirtex Medical Limited)
(ABN 35 078 166 122))
in accordance with section 127 of the)
Corporations Act:)

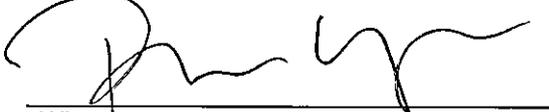
Director/Secretary

Director

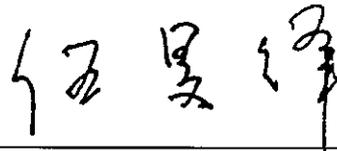
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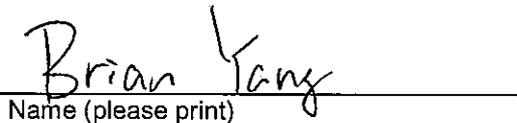
SIGNED, SEALED & DELIVERED by)
CDH Genetech Limited)
by being signed, sealed and delivered by)
its duly authorised representative in the)
presence of:)

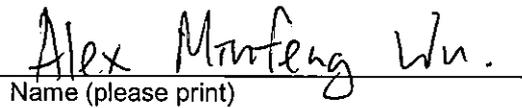


Witness



Authorised Representative


Name (please print)


Name (please print)

SIGNED, SEALED & DELIVERED by)
China Grand Pharmaceutical and)
Healthcare Holdings Limited)
by being signed, sealed and delivered by)
its duly authorised representative in the)
presence of:)

Witness

Authorised Representative

Name (please print)

Name (please print)

For personal use only

EXECUTED by the parties as a deed:

SIGNED, SEALED & DELIVERED by)
Sirtex Medical Limited)
(ABN 35 078 166 122))
in accordance with section 127 of the)
Corporations Act:)

Director/Secretary

Director

Name (please print)

Name (please print)

SIGNED, SEALED & DELIVERED by)
CDH Genetech Limited)
by being signed, sealed and delivered by)
its duly authorised representative in the)
presence of:)

Witness

Authorised Representative

Name (please print)

Name (please print)

SIGNED, SEALED & DELIVERED by)
China Grand Pharmaceutical and)
Healthcare Holdings Limited)
by being signed, sealed and delivered by)
its duly authorised representative in the)
presence of:)

Witness

Authorised Representative

Name (please print)

CHENGWEI LIU

Name (please print)

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Annexure A
Indicative Timetable

Event	Target date
Announcement	Date of this deed
First complete draft of Scheme Booklet (including expert's report)	10 Business Days after Announcement
Scheme Booklet complete and provided to ASIC	12 Business Days after Announcement
First Court hearing	13 Business Days after Scheme Booklet provided to ASIC
Mailing of Scheme Booklet complete	4 Business Days after First Court hearing
Scheme Meeting	1 Business Day for deemed service after completion of mailing of Scheme Booklet plus 28 days' notice
Second Court hearing	2 Business Days after Scheme Meeting
Effective Date	1 Business Day after Second Court hearing
Record Date	5 Business Days after Effective Date
Implementation Date	5 Business Days after Record Date

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Annexure B
Scheme of Arrangement

Attached.

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Scheme of Arrangement

Dated

Sirtex Medical Limited
(ABN 35 078 166 122)

Scheme Shareholders

Watson Mangioni Lawyers Pty Limited

Corporate and Commercial Lawyers
Level 23, 85 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) 9262 6666
Fax: (02) 9262 2626
Email: mail@wmlaw.com.au
Ref: CSC 217 7345

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Scheme of Arrangement under Part 5.1 of the *Corporations Act* 2001 (Cth).

Parties:

1. **Sirtex Medical Limited** (ABN 35 078 166 122) of Level 33, 101 Miller Street, North Sydney NSW 2060, Australia (**Sirtex**);
2. Each person registered as a holder of fully paid ordinary shares in Sirtex as at the Record Date (**Scheme Shareholders**).

1. Definitions and Interpretation

1.1. Definitions

In this Scheme:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires.

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

Bidders means each of:

- (a) CDH Genetech Limited, an exempted company incorporated in the Cayman Islands of 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong; and
- (b) China Grand Pharmaceutical and Healthcare Holdings Limited, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512), of Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong,

jointly and severally.

Bidders' Nominee means [insert].

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

CHES means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

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

Court means the Federal Court of Australia (NSW registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing between Sirtex and the Bidders.

Deed Poll means the deed poll dated [insert] 2018 executed by the Bidders and the Bidders' Nominee substantially in the form of Annexure C of the Scheme Implementation Deed or as otherwise agreed by Sirtex and the Bidders under which the Bidders and the Bidders' Nominee each covenants in favour of each Scheme Shareholder to perform its obligations under this Scheme.

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

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

Encumbrance means any security for payment of money or performance of obligations, including a mortgage, lien, charge, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth) or any agreement to create any of them or allow them to exist.

End Date means the date that is 12 months after the date of the Scheme Implementation Deed or such other date as is agreed in writing between Sirtex and the Bidders.

Government Agency means any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Australia, the United States of America or elsewhere, including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and the ASX or any other stock exchange.

Implementation Date means the fifth Business Day after the Record Date or such other date as agreed in writing between Sirtex and the Bidders.

Permitted Dividend means one or more dividends declared or determined by the board of directors of Sirtex in respect of the period 1 July 2017 to 30 June 2018, provided that the maximum aggregate amount paid or payable by Sirtex in respect of all such dividends is \$0.30 per Sirtex Share.

Record Date means 7pm on the fifth Business Day following the Effective Date or such other date as Sirtex and the Bidders agree.

Registered Address means, in relation to a Sirtex Shareholder, the address shown in the Share Register.

Scheme means this scheme of arrangement between Sirtex and the Scheme Shareholders under which all of the Scheme Shares will be transferred to the Bidders’ Nominee under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Sirtex, the Bidders and the Bidders’ Nominee in accordance with clause 9.2 of this Scheme.

Scheme Consideration means the consideration per Scheme Share to be provided by the Bidders (or the Bidders’ Nominee) in consideration for the transfer of the Scheme Share to the Bidders (or the Bidders’ Nominee), being, in respect of each Scheme Share, \$33.60 less the amount of any Permitted Dividend paid in respect of the Scheme Share in accordance with clause 4.4(e) of the Scheme Implementation Deed.

Scheme Implementation Deed means the scheme implementation deed dated [insert] between Sirtex and the Bidders under which, amongst other things, Sirtex has agreed to propose this Scheme to Sirtex Shareholders and each of the Bidders and Sirtex has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting of Sirtex Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act at which Sirtex Shareholders will vote on this Scheme.

Scheme Share means a Sirtex Share held by a Scheme Shareholder at the Record Date.

Scheme Share Transfer means, for each Scheme Shareholder, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Shareholder for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Scheme Shareholders means Sirtex Shareholders at the Record Date.

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

Share Register means the register of members of Sirtex maintained in accordance with the Corporations Act.

Sirtex Registry means Link Market Services Limited (ABN 54 083 214 537).

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

Sirtex Shareholder means each person who is registered in the Share Register as the holder of Sirtex Shares.

Trust Account means the trust account operated by or on behalf of Sirtex to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Shareholders in accordance with clause 6.1 of this Scheme.

1.2. Interpretation

In this Scheme, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this Scheme, and a reference to this Scheme includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word "includes" in any form is not a word of limitation;
- (i) a reference to "\$", "A\$" or "dollar" is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to the time in Sydney, New South Wales, Australia;
- (k) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (l) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to "associate", "control" (by an entity of another entity), "officer", "related body corporate", "subsidiary", "relevant interest" or "voting power" is to that term as defined in the Corporations Act;

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- (n) a reference to the ASX Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3. Business Day

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

1.4. Listing requirements included as law

A listing rule or business rule of a securities exchange will be regarded as a "law", and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

2. Preliminary

2.1. Sirtex

- (a) Sirtex is:
- (i) a public company limited by shares;
 - (ii) incorporated in Australia and registered in Western Australia; and
 - (iii) admitted to the official list of the ASX and Sirtex Shares are officially quoted on the stock market conducted by ASX.
- (b) As at [date] 2018, [insert] Sirtex Shares were on issue.

2.2. The Bidders

The Bidders are:

- (a) CDH Genetech Limited, which is an exempted company incorporated in the Cayman Islands; and
- (b) China Grand Pharmaceutical and Healthcare Holdings Limited, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512).

2.3. Bidders' Nominee

- (a) Pursuant to clause 2.2 of the Scheme Implementation Deed, the Bidders have nominated the Bidders' Nominee to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with clause 5 of this Scheme.
- (b) Clause 2.2 of the Scheme Implementation Deed provides that:
 - (i) the Bidders must procure that the Bidders' Nominee complies with the Scheme Implementation Deed as if the Bidders' Nominee were a party to it in place of the Bidders; and
 - (ii) any such nomination will not relieve the Bidders of their obligations under the Scheme Implementation Deed, including the obligation to pay (or procure the payment by Bidders' Nominee of) the Scheme Consideration as contemplated by the terms of this Scheme.

2.4. If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to the Bidders' Nominee, the Bidders' Nominee will provide (or Bidders will provide on behalf of the Bidders' Nominee) the Scheme Consideration to Sirtex on behalf of each Scheme Shareholder in accordance with the terms of this Scheme;
- (b) all Scheme Shares will be transferred to the Bidders' Nominee on the Implementation Date; and
- (c) Sirtex will enter the name of the Bidders' Nominee in the Share Register in respect of all Scheme Shares transferred to the Bidders' Nominee in accordance with the terms of this Scheme.

2.5. Scheme Implementation Deed

Sirtex and the Bidders have agreed by executing the Scheme Implementation Deed to implement the terms of this Scheme.

2.6. Deed Poll

The Bidders and the Bidders' Nominee have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration.

3. Conditions Precedent

3.1. Conditions precedent to Scheme

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

- (a) as at 8am on the Second Court Date, neither the Deed Poll nor the Scheme Implementation Deed have been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Deed having been satisfied or waived (other than the condition precedent in clause 3.1(c) of this Scheme) in accordance with the terms of the Scheme Implementation Deed by 8am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Sirtex, the Bidders and the Bidders' Nominee having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

3.2. Conditions precedent and operation of clause 5

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

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3.3. Certificate in relation to conditions precedent

- (a) Each of Sirtex and the Bidders must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8am on the Second Court Date.
- (b) The certificates referred to in clause 3.3(a) will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8am on the Second Court Date.

4. Scheme

4.1. Effective Date

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2. Termination and End Date

Without limiting any rights under the Scheme Implementation Deed, if:

- (a) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms before the Scheme becomes Effective; or
- (b) the Effective Date does not occur on or before the End Date,

then each of the Bidders, the Bidders' Nominee and Sirtex are released from any further obligation to take steps to implement the Scheme.

5. Implementation of Scheme

5.1. Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, Sirtex must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5pm on the first Business Day after the day on which the Court approves this Scheme or such later time as the Bidders, the Bidders' Nominee and Sirtex agree in writing.

5.2. Transfer and registration of Sirtex Shares

On the Implementation Date, but subject to the payment of the Scheme Consideration for the Scheme Shares into the Trust Account in accordance with clause 6.1(a) of this Scheme and the Bidders having provided Sirtex with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidders' Nominee without the need for any further act by any Scheme Shareholder (other than acts performed by Sirtex as attorney and agent for Scheme Shareholders under clause 9.1 of this Scheme) by:
 - (i) Sirtex delivering to the Bidders' Nominee a duly completed and executed Scheme Share Transfer executed on behalf of the Scheme Shareholders; and

- (ii) the Bidders' Nominee duly executing the Scheme Share Transfer, attending to the stamping of the Scheme Share Transfer (if required) and delivering it to Sirtex for registration; and
- (b) as soon as practicable after receipt of the duly executed Scheme Share Transfer, Sirtex must enter, or procure the entry of, the name of the Bidders' Nominee in the Share Register in respect of all Scheme Shares transferred to the Bidders' Nominee in accordance with the terms of this Scheme.

5.3. Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to the Bidders' Nominee of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

5.4. Title and rights in Sirtex Shares

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, the Bidders' Nominee will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Sirtex of the Bidders' Nominee in the Share Register as the holder of the Scheme Shares.

5.5. Scheme Shareholders' agreements

Under this Scheme, each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

5.6. Warranty by Scheme Shareholders

Each Scheme Shareholder warrants to the Bidders' Nominee, and is deemed to have authorised Sirtex to warrant to the Bidders' Nominee as agent and attorney for the Scheme Shareholder by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) transferred to the Bidders' Nominee under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to the Bidders' Nominee under the Scheme.

5.7. Transfer free of Encumbrances

To the extent permitted by law, all Sirtex Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidders' Nominee under this Scheme will, at the date of the transfer of them to the Bidders' Nominee, vest in the Bidders' Nominee free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8. Appointment of the Bidders' Nominee as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6.1 of this Scheme, on and from the Implementation Date until Sirtex registers the Bidders' Nominee as the holder of all of the Sirtex Shares in the Share Register, each Scheme Shareholder:

- (a) irrevocably appoints Sirtex as attorney and agent (and directs Sirtex in such capacity) to appoint the Bidders' Nominee and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend

shareholders' meetings, exercise the votes attaching to Sirtex Shares registered in its name and sign any shareholders resolution, and 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 5.8(a));

- (b) must take all other actions in the capacity of the registered holder of Sirtex Shares as the Bidders' Nominee reasonably directs;
- (c) acknowledges and agrees that in exercising the powers referred to in this clause 5.8(a), the Bidders' Nominee and any director, officer or agent nominated under this clause 5.8(a) may act in the best interests of the Bidders' Nominee as the intended registered holder of the Scheme Shares.

Sirtex undertakes in favour of each Scheme Shareholder that it will appoint the Bidders' Nominee and each of its directors from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 5.8(a) of this Scheme.

6. Scheme Consideration

6.1. Payment of Scheme Consideration

- (a) The Bidders and the Bidders' Nominee must (pursuant to their respective obligations under the Deed Poll), by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account.
- (b) On the Implementation Date, subject to receipt of the Scheme Consideration from or on behalf of the Bidders (or the Bidders' Nominee) in accordance with clause 6.1(a) of this Scheme, Sirtex must pay from the Trust Account to each Scheme Shareholder an amount equal to the Scheme Consideration for each Scheme Share transferred to the Bidders' Nominee on the Implementation Date by that Scheme Shareholder, which obligation will be satisfied by Sirtex:
 - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Share Register to receive dividend payments from Sirtex 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
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 6.1(b)(i), dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Shareholder by pre-paid ordinary post (or, if the address of the Scheme Shareholder in the Share Register is outside Australia, by pre-paid airmail post) to their Registered Address at the Record Date, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.5).
- (c) If there is any surplus in the amount held by Sirtex in the Trust Account, that surplus must be paid by Sirtex to the Bidders' Nominee following the satisfaction of Sirtex's obligations under this clause.

6.2. Cancellation and re-issue of cheques

- (a) Sirtex may cancel a cheque issued under clause 6.1 of this Scheme if the cheque:
 - (i) is returned to Sirtex; or

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- (ii) has not been presented for payment within 6 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 (which request may not be made until the date which is 5 Business Days after the Implementation Date), Sirtex must reissue a cheque that was previously cancelled under this clause 6.2.
- (c) Sirtex must maintain appropriate records of all payments made in accordance with this clause 6 of this Scheme, including (amongst other things) the amounts paid (including the method of payment in accordance with clause 6.1(b)), the persons paid and any cancelled cheques pursuant to this clause 6.2.

6.3. Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidders' Nominee.

6.4. Orders of a court

In the case of notice having been given to Sirtex (or the Sirtex Registry) of an order or direction made by a court of competent jurisdiction or by a Government Agency:

- (a) which 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 clause 6.1 of this Scheme, then Sirtex shall procure that payment is made in accordance with that order; or
- (b) which would prevent Sirtex from dispatching payment to any particular Scheme Shareholder in accordance with clause 6.1 of this Scheme, or such payment is otherwise prohibited by applicable law, Sirtex will be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.1 of this Scheme is permitted by law.

6.5. Joint holders

In the case of Scheme Shares held in joint names, any bank cheque required to be paid to Scheme Shareholders by or on behalf of the Bidders or the Bidders' Nominee must be payable to the joint holders and be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

7. Dealings in Scheme Shares

7.1. Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Share Register as the holder of the relevant Scheme Shares on or before the Record Date; and

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- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Share Register is kept.

7.2. Share Register

Sirtex must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before the Record Date, provided that nothing in this clause 7.2 requires Sirtex to register a transfer that would result in a Sirtex Shareholder holding a parcel of Sirtex Shares that is less than a “marketable parcel” (as defined in the operating rules of ASX).

7.3. No disposals after Effective Date

- (a) If this 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 Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) Sirtex will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to the Bidders’ Nominee pursuant to this Scheme and any subsequent transfer by the Bidders’ Nominee or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

7.4. Maintenance of Share Register

For the purpose of determining entitlements to the Scheme Consideration, Sirtex will maintain the Share Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Shareholders and the Bidders’ Nominee has been entered in the Share Register as the holder of all the Scheme Shares. The Share Register in this form will solely determine entitlements to the Scheme Consideration.

7.5. Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to the Bidders’ Nominee contemplated in clauses 5.2 and 6.1 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those Scheme Shares (other than statements of holding in favour of the Bidders’ Nominee and its successors in title). After the Record Date, each entry current on the Share Register as at the Record Date (other than entries in respect of the Bidders’ Nominee or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

7.6. Details of Scheme Shareholders

Within 3 Business Days after the Record Date Sirtex will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder, as shown in the Share Register at the Record Date, are available to the Bidders and the Bidders’ Nominee in such form as the Bidders and the Bidders’ Nominee reasonably requires.

8. Quotation of Sirtex Shares

- (a) Suspension of trading on ASX in Sirtex Shares will occur from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, Sirtex will apply:
- (i) for termination of the official quotation of Sirtex Shares on the ASX; and

- (ii) to have itself removed from the official list of the ASX,

in each case with effect on and from the close of trading day immediately following, or shortly after, the Implementation Date, as determined by the Bidders' Nominee.

9. General Scheme Provisions

9.1. Power of attorney

Each Scheme Shareholder, without the need for any further act by any Scheme Shareholder, irrevocably appoints Sirtex and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Scheme Share Transfer;
- (b) enforcing the Deed Poll against the Bidders or the Bidders' Nominee,

and Sirtex accepts such appointment.

9.2. Variations, alterations and conditions

Sirtex may, with the consent of the Bidders and the Bidders' Nominee (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

9.3. Further action by Sirtex

Sirtex will execute all documents and do all things (on its own behalf and on behalf of each Scheme Shareholder) necessary or expedient to implement, and perform its obligations under, this Scheme.

9.4. Authority and acknowledgement

Each of the Scheme Shareholders:

- (a) irrevocably consents to Sirtex, the Bidders and the Bidders' Nominee doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Sirtex and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Sirtex.

9.5. No liability when acting in good faith

Neither Sirtex nor the Bidders and the Bidders' Nominee, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

9.6. Enforcement of Deed Poll

Sirtex undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against the Bidders and the Bidders' Nominee on behalf of and as agent and attorney for the Scheme Shareholders.

9.7. Stamp duty and registration fees

The Bidders' Nominee (or the Bidders on behalf of the Bidders' Nominee) will:

- (a) pay all stamp duties, registration fees and similar taxes payable or assessed as being payable in connection with this Scheme or the Deed Poll (including any fees, fines, penalties and interest in connection with those amounts); and
- (b) indemnify each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from its failure to comply with clause 9.7(a).

9.8. Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Sirtex, 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 Sirtex's registered office or at the office of the Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Sirtex Shareholder shall not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.9. Governing law and jurisdiction

- (a) This Scheme is governed by the law in force in New South Wales.
- (b) Each party irrevocably and unconditionally:
 - (i) submits to the non-exclusive jurisdiction of the courts of that place; and
 - (ii) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

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Annexure C

Deed Poll

Attached.



Deed Poll

Dated

Given by

CDH Genetech Limited

and

China Grand Pharmaceutical and Healthcare Holdings Limited

and

[insert]

In favour of

Scheme Shareholders

Watson Mangioni Lawyers Pty Limited

Corporate and Commercial Lawyers
Level 23, 85 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) 9262 6666
Fax: (02) 9262 2626
Email: mail@wmlaw.com.au
Ref: CSC 217 7345

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This Deed Poll is made on

2018

Made by:

1. **CDH Genetech Limited**, an exempted company incorporated in the Cayman Islands of 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong (**CDH Genetech**);
2. **China Grand Pharmaceutical and Healthcare Holdings Limited**, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512), of Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong (**China Grand**); and
3. **[insert] of [insert address] (Bidders' Nominee)**

In favour of:

Each person registered as a holder of fully paid ordinary shares in Sirtex as at the Record Date (**Scheme Shareholders**).

Recitals:

- A. The directors of Sirtex have resolved that Sirtex should propose the Scheme.
- B. The effect of the Scheme will be that all Scheme Shares will be transferred to the Bidders' Nominee.
- C. Sirtex and the Bidders have entered into the Scheme Implementation Deed.
- D. In the Scheme Implementation Deed, the Bidders have agreed (amongst other things) to provide (or procure the provision of) the Scheme Consideration to Sirtex on behalf of the Scheme Shareholders, subject to the satisfaction of certain conditions.
- E. Pursuant to clause 2.2 of the Scheme Implementation Deed, the Bidders have nominated the Bidders' Nominee as the entity to acquire the Scheme Shares under the Scheme.
- F. Each of the Bidders and the Bidders' Nominee is entering into this deed poll for the purpose of covenanting in favour of Scheme Shareholders to perform its respective obligations in relation to the Scheme.

1. Definitions and Interpretation

1.1. Definitions

In this deed poll:

- (a) **Bidders** means each of CDH Genetech and China Grand, jointly and severally;
- (b) **Scheme** means the proposed scheme of arrangement between Sirtex and the Scheme Shareholders under which all of the Scheme Shares will be transferred to the Bidders' Nominee under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Sirtex and the Bidders, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Sirtex, the Bidders and the Bidders' Nominee in accordance with clause 9.2 of the Scheme;
- (c) **Scheme Implementation Deed** means the scheme implementation deed dated **[insert]** 2018 between Sirtex and the Bidders under which, amongst other things, Sirtex has agreed to

propose the Scheme to Sirtex Shareholders and each of the Bidders and Sirtex has agreed to take certain steps to give effect to this Scheme; and

- (d) all other words and phrases used in this deed poll have the same meaning as given to them in the Scheme.

1.2. Interpretation

Clauses 1.2, 1.3 and 1.4 of the Scheme apply to the interpretation of this deed poll except that references to “this Scheme” in that clause are to be read as references to “this deed poll” and any reference to “party” are taken to include the Scheme Shareholders.

1.3. Nature of deed poll

Each of the Bidders and the Bidders’ Nominee 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 Sirtex and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against the Bidders or the Bidders’ Nominee.

2. Conditions Precedent and Termination

2.1. Conditions precedent

Each of the Bidders’ and the Bidders’ Nominee’s obligations under clause 4 are subject to the Scheme becoming Effective.

2.2. Termination

Each of the Bidders’ and the Bidders’ Nominee’s obligations 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 Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Deed is terminated in accordance with its terms.

2.3. Consequences of termination

If this deed poll is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Shareholders:

- (a) each of the Bidders and the Bidders’ Nominee is released from its obligations to further perform this deed poll except those obligations contained in clause 8.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights, powers or remedies they have against the Bidders and the Bidders’ Nominee (as applicable) in respect of any breach of this deed poll which occurs before it is terminated.

3. Performance of Obligations Generally

Each of the Bidders and the Bidders’ Nominee must comply with its respective obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

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4. Scheme Consideration

4.1. Scheme Consideration

Subject to clause 2, each of the Bidders and the Bidders' Nominee undertakes in favour of each Scheme Shareholder to pay, or to procure the payment of, the Scheme Consideration to the Trust Account on behalf of each Scheme Shareholder subject to and in accordance with the terms of the Scheme.

4.2. Manner of payment

Subject to clause 4.3, the Bidders' and the Bidders' Nominee's respective obligation to provide, or procure the provision of, the Scheme Consideration to Sirtex on behalf of each Scheme Shareholder is satisfied by the Bidders (or if applicable, the Bidders' Nominee), no later than the Business Day before the Implementation Date, depositing in cleared funds the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest (less bank fees and other charges) on the amount deposited will be to the Bidders' or the Bidders' Nominee's account).

4.3. Joint holders

In the case of Scheme Shares held in joint names, any bank cheque required to be paid to Scheme Shareholders by the Bidders (or if applicable, the Bidders' Nominee) must be payable to the joint holders and be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

5. Representations and Warranties

Each of the Bidders and the Bidders' Nominee represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) 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;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding upon it and enforceable against it in accordance with its terms;
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound; and
- (f) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

6. Continuing Obligations

Subject to clause 8.3, this deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Bidders and the Bidders' Nominee have fully performed their respective obligations under this deed poll; or

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- (b) the earlier termination of this deed poll under clause 2.2.

7. Notices

7.1. Form

Unless this deed expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications to the Bidders or the Bidders' Nominee in connection with this deed must be in writing and signed by the sender (if an individual) or a person duly authorised by the sender.

7.2. Delivery

Communications to the Bidders or the Bidders' Nominee must be:

- (a) delivered by hand to the address of the Bidders or the Bidders' Nominee (as applicable) referred to in clause 7.3;
- (b) sent by regular ordinary post (airmail if sent from one country to another) to the address of the Bidder or the Bidders' Nominee (as applicable) referred to in clause 7.3; or
- (c) given in any other way permitted by law.

7.3. Notice details

The notice details of:

- (a) CDH Genetech are:

Name: CDH Genetech Limited
 Address: 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong
 Attention: Alex Minfeng WU
 Email: wuminfeng@cdhfund.com

- (b) China Grand are:

Name: China Grand Pharmaceutical and Healthcare Holdings Limited
 Address: Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong
 Attention: Rocky Shao
 Email: rocky.shao@chinagrandpharm.com

- (c) the Bidders' Nominee are:

Name: [insert]
 Address: [insert]
 Attention: Alex Minfeng WU
 Email: wuminfeng@cdhfund.com

7.4. When effective

Communications take effect from the time they are received or taken to be received under clause 7.5 (whichever happens first) unless a later time is specified.

7.5. When taken to be received

Subject to clause 7.6, communications are taken to be received:

- (a) if delivered by hand, when delivered; or
- (b) if sent by post, 5 Business Days after posting (if posted to an address in the same country) or 10 Business Days after posting (if posted to an address in a different country).

7.6. Receipt outside business hours

Despite clauses 7.4 and 7.5, if communications are received or taken to be received under clause 7.5 after 5pm on a Business or on a non-Business Day, they are taken to be received at 9am on the next Business Day and take effect from that time unless a later time is specified.

8. General

8.1. Stamp duty

The Bidders (or if applicable, the Bidders' Nominee) must:

- (a) pay all stamp duty, registration fees and similar taxes payable or assessed as being payable on or in connection with this deed poll, the performance of this deed poll, or any instruments entered into under this deed poll and in respect of a transaction effected by or made under the Scheme and this deed poll (including any fees, fines, penalties and interest in connection with any of those amounts);
- (b) pay other costs in respect of the Scheme (including, in connection with the transfer of Scheme Shares to the Bidders (or if applicable, the Bidders' Nominee) in accordance with the terms of the Scheme); and
- (c) indemnify on demand each Scheme Shareholder against any liability arising from failure to comply with clauses 8.1(a) or 8.1(b).

8.2. Waiver

- (a) A waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party giving the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (i) a right arising from a breach of this deed poll; or
 - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed poll,
 does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

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8.3. Variation

A provision of this deed poll or any right created under it may not be varied, altered or otherwise amended unless:

- (a) if before the First Court Date (as defined in the Scheme Implementation Deed), the variation is agreed to by Sirtex, the Bidders and the Bidders' Nominee in writing; and
- (b) if on or after the First Court Date (as defined in the Scheme Implementation Deed), the variation is agreed to by Sirtex, the Bidders and the Bidders' Nominee in writing and the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event the Bidders and the Bidders' Nominee must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation, alteration or amendment.

8.4. Remedies cumulative

The rights, powers and remedies of the Bidders, the Bidders' Nominee and the Scheme Shareholders under this deed poll are cumulative and are in addition to, and do not exclude any, other rights, powers and remedies given by law independently of this deed poll.

8.5. Assignment

The rights and obligations of the Bidders, the Bidders' Nominee and each Scheme Shareholder under this deed poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of the Bidders, the Bidders' Nominee and Sirtex.

8.6. Governing law and jurisdiction

This deed poll is governed by the law in force in New South Wales, Australia. The Bidders and the Bidders' Nominee irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that place.

8.7. Further action

The Bidders and the Bidders' Nominee must execute all deeds and other documents and do all things (on their own behalf or on behalf of each Scheme Shareholder) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

8.8. Service of process

- (a) Without preventing any method of service allowed under any relevant law, each Bidder and the Bidders' Nominee:
 - (i) irrevocably appoints MinterEllison of Level 23, Rialto Towers, 525 Collins Street, Melbourne VIC 3000, Australia (attention: Alberto Colla) as its process agent to receive any document in an action in connection with this deed poll; and
 - (ii) agrees that failure by a process agent to notify the Bidders or the Bidders' Nominee (as applicable) of any document in an action in connection with this deed poll does not invalidate the action concerned.
- (b) If for any reason MinterEllison ceases to be able to act as process agent, each Bidder and the Bidders' Nominee agrees to appoint another person as its process agent in Australia and ensure that the replacement process agent accepts its appointment and confirms its appointment to the Bidders and the Bidders' Nominee.

- (c) Each Bidder and the Bidders' Nominee agrees that service of documents on its process agent at the following address is sufficient service on it:

Name: MinterEllison
Address: Level 23, Rialto Towers, 525 Collins Street, Melbourne VIC 3000
Attention: Alberto Colla
Email: Alberto.Colla@minterellison.com

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EXECUTED as a deed poll:

SIGNED, SEALED & DELIVERED by)
CDH Genetech Limited)
by its duly authorised representative in the)
presence of:)

Witness

Authorised Representative

Name (please print)

Name (please print)

SIGNED, SEALED & DELIVERED by)
China Grand Pharmaceutical and)
Healthcare Holdings Limited)
by its duly authorised representative in the)
presence of:)

Witness

Authorised Representative

Name (please print)

Name (please print)

SIGNED, SEALED & DELIVERED by)
[insert])
in accordance with **[insert]**:)

[insert]

[insert]

Name (please print)

Name (please print)

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Annexure A
Scheme

Attached.

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Scheme of Arrangement

Dated

Sirtex Medical Limited
(ABN 35 078 166 122)

Scheme Shareholders

Watson Mangioni Lawyers Pty Limited

Corporate and Commercial Lawyers
Level 23, 85 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) 9262 6666
Fax: (02) 9262 2626
Email: mail@wmlaw.com.au
Ref: CSC 217 7345

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Scheme of Arrangement under Part 5.1 of the *Corporations Act* 2001 (Cth).

Parties:

1. **Sirtex Medical Limited** (ABN 35 078 166 122) of Level 33, 101 Miller Street, North Sydney NSW 2060, Australia (**Sirtex**);
2. Each person registered as a holder of fully paid ordinary shares in Sirtex as at the Record Date (**Scheme Shareholders**).

1. Definitions and Interpretation

1.1. Definitions

In this Scheme:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or the securities market operated by it, as the context requires.

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

Bidders means each of:

- (a) CDH Genetech Limited, an exempted company incorporated in the Cayman Islands of 1503 International Commerce Center, 1 Austin Road West, Kowloon, Hong Kong; and
- (b) China Grand Pharmaceutical and Healthcare Holdings Limited, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512), of Units 3302, 33/F, The Center, 99 Queen's Road Central, Hong Kong,

jointly and severally.

Bidders' Nominee means [insert].

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

CHES means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

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

Court means the Federal Court of Australia (NSW registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing between Sirtex and the Bidders.

Deed Poll means the deed poll dated [insert] 2018 executed by the Bidders and the Bidders' Nominee substantially in the form of Annexure C of the Scheme Implementation Deed or as otherwise agreed by Sirtex and the Bidders under which the Bidders and the Bidders' Nominee each covenants in favour of each Scheme Shareholder to perform its obligations under this Scheme.

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

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

Encumbrance means any security for payment of money or performance of obligations, including a mortgage, lien, charge, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth) or any agreement to create any of them or allow them to exist.

End Date means the date that is 12 months after the date of the Scheme Implementation Deed or such other date as is agreed in writing between Sirtex and the Bidders.

Government Agency means any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Australia, the United States of America or elsewhere, including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and the ASX or any other stock exchange.

Implementation Date means the fifth Business Day after the Record Date or such other date as agreed in writing between Sirtex and the Bidders.

Permitted Dividend means one or more dividends declared or determined by the board of directors of Sirtex in respect of the period 1 July 2017 to 30 June 2018, provided that the maximum aggregate amount paid or payable by Sirtex in respect of all such dividends is \$0.30 per Sirtex Share.

Record Date means 7pm on the fifth Business Day following the Effective Date or such other date as Sirtex and the Bidders agree.

Registered Address means, in relation to a Sirtex Shareholder, the address shown in the Share Register.

Scheme means this scheme of arrangement between Sirtex and the Scheme Shareholders under which all of the Scheme Shares will be transferred to the Bidders’ Nominee under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Sirtex, the Bidders and the Bidders’ Nominee in accordance with clause 9.2 of this Scheme.

Scheme Consideration means the consideration per Scheme Share to be provided by the Bidders (or the Bidders’ Nominee) in consideration for the transfer of the Scheme Share to the Bidders (or the Bidders’ Nominee), being, in respect of each Scheme Share, \$33.60 less the amount of any Permitted Dividend paid in respect of the Scheme Share in accordance with clause 4.4(e) of the Scheme Implementation Deed.

Scheme Implementation Deed means the scheme implementation deed dated [insert] between Sirtex and the Bidders under which, amongst other things, Sirtex has agreed to propose this Scheme to Sirtex Shareholders and each of the Bidders and Sirtex has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting of Sirtex Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act at which Sirtex Shareholders will vote on this Scheme.

Scheme Share means a Sirtex Share held by a Scheme Shareholder at the Record Date.

Scheme Share Transfer means, for each Scheme Shareholder, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Shareholder for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Scheme Shareholders means Sirtex Shareholders at the Record Date.

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

Share Register means the register of members of Sirtex maintained in accordance with the Corporations Act.

Sirtex Registry means Link Market Services Limited (ABN 54 083 214 537).

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

Sirtex Shareholder means each person who is registered in the Share Register as the holder of Sirtex Shares.

Trust Account means the trust account operated by or on behalf of Sirtex to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Shareholders in accordance with clause 6.1 of this Scheme.

1.2. Interpretation

In this Scheme, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this Scheme, and a reference to this Scheme includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word "includes" in any form is not a word of limitation;
- (i) a reference to "\$", "A\$" or "dollar" is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to the time in Sydney, New South Wales, Australia;
- (k) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (l) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) a reference to "associate", "control" (by an entity of another entity), "officer", "related body corporate", "subsidiary", "relevant interest" or "voting power" is to that term as defined in the Corporations Act;

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- (n) a reference to the ASX Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3. Business Day

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

1.4. Listing requirements included as law

A listing rule or business rule of a securities exchange will be regarded as a "law", and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

2. Preliminary

2.1. Sirtex

- (a) Sirtex is:
- (i) a public company limited by shares;
 - (ii) incorporated in Australia and registered in Western Australia; and
 - (iii) admitted to the official list of the ASX and Sirtex Shares are officially quoted on the stock market conducted by ASX.
- (b) As at [date] 2018, [insert] Sirtex Shares were on issue.

2.2. The Bidders

The Bidders are:

- (a) CDH Genetech Limited, which is an exempted company incorporated in the Cayman Islands; and
- (b) China Grand Pharmaceutical and Healthcare Holdings Limited, a company incorporated in Bermuda and whose shares are listed on the Main Board of the Stock Exchange of Hong Kong Limited (stock code: 512).

2.3. Bidders' Nominee

- (a) Pursuant to clause 2.2 of the Scheme Implementation Deed, the Bidders have nominated the Bidders' Nominee to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with clause 5 of this Scheme.
- (b) Clause 2.2 of the Scheme Implementation Deed provides that:
 - (i) the Bidders must procure that the Bidders' Nominee complies with the Scheme Implementation Deed as if the Bidders' Nominee were a party to it in place of the Bidders; and
 - (ii) any such nomination will not relieve the Bidders of their obligations under the Scheme Implementation Deed, including the obligation to pay (or procure the payment by Bidders' Nominee of) the Scheme Consideration as contemplated by the terms of this Scheme.

2.4. If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to the Bidders' Nominee, the Bidders' Nominee will provide (or Bidders will provide on behalf of the Bidders' Nominee) the Scheme Consideration to Sirtex on behalf of each Scheme Shareholder in accordance with the terms of this Scheme;
- (b) all Scheme Shares will be transferred to the Bidders' Nominee on the Implementation Date; and
- (c) Sirtex will enter the name of the Bidders' Nominee in the Share Register in respect of all Scheme Shares transferred to the Bidders' Nominee in accordance with the terms of this Scheme.

2.5. Scheme Implementation Deed

Sirtex and the Bidders have agreed by executing the Scheme Implementation Deed to implement the terms of this Scheme.

2.6. Deed Poll

The Bidders and the Bidders' Nominee have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration.

3. Conditions Precedent

3.1. Conditions precedent to Scheme

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

- (a) as at 8am on the Second Court Date, neither the Deed Poll nor the Scheme Implementation Deed have been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Deed having been satisfied or waived (other than the condition precedent in clause 3.1(c) of this Scheme) in accordance with the terms of the Scheme Implementation Deed by 8am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Sirtex, the Bidders and the Bidders' Nominee having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

3.2. Conditions precedent and operation of clause 5

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

3.3. Certificate in relation to conditions precedent

- (a) Each of Sirtex and the Bidders must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8am on the Second Court Date.
- (b) The certificates referred to in clause 3.3(a) will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8am on the Second Court Date.

4. Scheme

4.1. Effective Date

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2. Termination and End Date

Without limiting any rights under the Scheme Implementation Deed, if:

- (a) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms before the Scheme becomes Effective; or
- (b) the Effective Date does not occur on or before the End Date,

then each of the Bidders, the Bidders' Nominee and Sirtex are released from any further obligation to take steps to implement the Scheme.

5. Implementation of Scheme

5.1. Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, Sirtex must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5pm on the first Business Day after the day on which the Court approves this Scheme or such later time as the Bidders, the Bidders' Nominee and Sirtex agree in writing.

5.2. Transfer and registration of Sirtex Shares

On the Implementation Date, but subject to the payment of the Scheme Consideration for the Scheme Shares into the Trust Account in accordance with clause 6.1(a) of this Scheme and the Bidders having provided Sirtex with written confirmation thereof:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidders' Nominee without the need for any further act by any Scheme Shareholder (other than acts performed by Sirtex as attorney and agent for Scheme Shareholders under clause 9.1 of this Scheme) by:
 - (i) Sirtex delivering to the Bidders' Nominee a duly completed and executed Scheme Share Transfer executed on behalf of the Scheme Shareholders; and

- (ii) the Bidders' Nominee duly executing the Scheme Share Transfer, attending to the stamping of the Scheme Share Transfer (if required) and delivering it to Sirtex for registration; and
- (b) as soon as practicable after receipt of the duly executed Scheme Share Transfer, Sirtex must enter, or procure the entry of, the name of the Bidders' Nominee in the Share Register in respect of all Scheme Shares transferred to the Bidders' Nominee in accordance with the terms of this Scheme.

5.3. Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to the Bidders' Nominee of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

5.4. Title and rights in Sirtex Shares

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, the Bidders' Nominee will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Sirtex of the Bidders' Nominee in the Share Register as the holder of the Scheme Shares.

5.5. Scheme Shareholders' agreements

Under this Scheme, each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

5.6. Warranty by Scheme Shareholders

Each Scheme Shareholder warrants to the Bidders' Nominee, and is deemed to have authorised Sirtex to warrant to the Bidders' Nominee as agent and attorney for the Scheme Shareholder by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) transferred to the Bidders' Nominee under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to the Bidders' Nominee under the Scheme.

5.7. Transfer free of Encumbrances

To the extent permitted by law, all Sirtex Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidders' Nominee under this Scheme will, at the date of the transfer of them to the Bidders' Nominee, vest in the Bidders' Nominee free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8. Appointment of the Bidders' Nominee as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6.1 of this Scheme, on and from the Implementation Date until Sirtex registers the Bidders' Nominee as the holder of all of the Sirtex Shares in the Share Register, each Scheme Shareholder:

- (a) irrevocably appoints Sirtex as attorney and agent (and directs Sirtex in such capacity) to appoint the Bidders' Nominee and each of its directors from time to time (jointly and each of them individually) as its sole proxy and where applicable, corporate representative, to attend

shareholders' meetings, exercise the votes attaching to Sirtex Shares registered in its name and sign any shareholders resolution, and 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 5.8(a));

- (b) must take all other actions in the capacity of the registered holder of Sirtex Shares as the Bidders' Nominee reasonably directs;
- (c) acknowledges and agrees that in exercising the powers referred to in this clause 5.8(a), the Bidders' Nominee and any director, officer or agent nominated under this clause 5.8(a) may act in the best interests of the Bidders' Nominee as the intended registered holder of the Scheme Shares.

Sirtex undertakes in favour of each Scheme Shareholder that it will appoint the Bidders' Nominee and each of its directors from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 5.8(a) of this Scheme.

6. Scheme Consideration

6.1. Payment of Scheme Consideration

- (a) The Bidders and the Bidders' Nominee must (pursuant to their respective obligations under the Deed Poll), by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account.
- (b) On the Implementation Date, subject to receipt of the Scheme Consideration from or on behalf of the Bidders (or the Bidders' Nominee) in accordance with clause 6.1(a) of this Scheme, Sirtex must pay from the Trust Account to each Scheme Shareholder an amount equal to the Scheme Consideration for each Scheme Share transferred to the Bidders' Nominee on the Implementation Date by that Scheme Shareholder, which obligation will be satisfied by Sirtex:
 - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Share Register to receive dividend payments from Sirtex 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
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 6.1(b)(i), dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Shareholder by pre-paid ordinary post (or, if the address of the Scheme Shareholder in the Share Register is outside Australia, by pre-paid airmail post) to their Registered Address at the Record Date, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.5).
- (c) If there is any surplus in the amount held by Sirtex in the Trust Account, that surplus must be paid by Sirtex to the Bidders' Nominee following the satisfaction of Sirtex's obligations under this clause.

6.2. Cancellation and re-issue of cheques

- (a) Sirtex may cancel a cheque issued under clause 6.1 of this Scheme if the cheque:
 - (i) is returned to Sirtex; or

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- (ii) has not been presented for payment within 6 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 (which request may not be made until the date which is 5 Business Days after the Implementation Date), Sirtex must reissue a cheque that was previously cancelled under this clause 6.2.
- (c) Sirtex must maintain appropriate records of all payments made in accordance with this clause 6 of this Scheme, including (amongst other things) the amounts paid (including the method of payment in accordance with clause 6.1(b)), the persons paid and any cancelled cheques pursuant to this clause 6.2.

6.3. Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidders' Nominee.

6.4. Orders of a court

In the case of notice having been given to Sirtex (or the Sirtex Registry) of an order or direction made by a court of competent jurisdiction or by a Government Agency:

- (a) which 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 clause 6.1 of this Scheme, then Sirtex shall procure that payment is made in accordance with that order; or
- (b) which would prevent Sirtex from dispatching payment to any particular Scheme Shareholder in accordance with clause 6.1 of this Scheme, or such payment is otherwise prohibited by applicable law, Sirtex will be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.1 of this Scheme is permitted by law.

6.5. Joint holders

In the case of Scheme Shares held in joint names, any bank cheque required to be paid to Scheme Shareholders by or on behalf of the Bidders or the Bidders' Nominee must be payable to the joint holders and be forwarded to the holder whose name appears first in the Share Register as at the Record Date.

7. Dealings in Scheme Shares

7.1. Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Share Register as the holder of the relevant Scheme Shares on or before the Record Date; and

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- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Share Register is kept.

7.2. Share Register

Sirtex must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before the Record Date, provided that nothing in this clause 7.2 requires Sirtex to register a transfer that would result in a Sirtex Shareholder holding a parcel of Sirtex Shares that is less than a “marketable parcel” (as defined in the operating rules of ASX).

7.3. No disposals after Effective Date

- (a) If this 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 Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) Sirtex will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to the Bidders’ Nominee pursuant to this Scheme and any subsequent transfer by the Bidders’ Nominee or its successors in title) or received prior to the Record Date but not in registrable or actionable form.

7.4. Maintenance of Share Register

For the purpose of determining entitlements to the Scheme Consideration, Sirtex will maintain the Share Register in accordance with the provisions of this clause 7 until the Scheme Consideration has been paid to the Scheme Shareholders and the Bidders’ Nominee has been entered in the Share Register as the holder of all the Scheme Shares. The Share Register in this form will solely determine entitlements to the Scheme Consideration.

7.5. Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to the Bidders’ Nominee contemplated in clauses 5.2 and 6.1 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those Scheme Shares (other than statements of holding in favour of the Bidders’ Nominee and its successors in title). After the Record Date, each entry current on the Share Register as at the Record Date (other than entries in respect of the Bidders’ Nominee or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

7.6. Details of Scheme Shareholders

Within 3 Business Days after the Record Date Sirtex will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder, as shown in the Share Register at the Record Date, are available to the Bidders and the Bidders’ Nominee in such form as the Bidders and the Bidders’ Nominee reasonably requires.

8. Quotation of Sirtex Shares

- (a) Suspension of trading on ASX in Sirtex Shares will occur from the close of trading on ASX on the Effective Date.
- (b) After the Scheme has been fully implemented, Sirtex will apply:
- (i) for termination of the official quotation of Sirtex Shares on the ASX; and

- (ii) to have itself removed from the official list of the ASX,

in each case with effect on and from the close of trading day immediately following, or shortly after, the Implementation Date, as determined by the Bidders' Nominee.

9. General Scheme Provisions

9.1. Power of attorney

Each Scheme Shareholder, without the need for any further act by any Scheme Shareholder, irrevocably appoints Sirtex and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Scheme Share Transfer;
- (b) enforcing the Deed Poll against the Bidders or the Bidders' Nominee,

and Sirtex accepts such appointment.

9.2. Variations, alterations and conditions

Sirtex may, with the consent of the Bidders and the Bidders' Nominee (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

9.3. Further action by Sirtex

Sirtex will execute all documents and do all things (on its own behalf and on behalf of each Scheme Shareholder) necessary or expedient to implement, and perform its obligations under, this Scheme.

9.4. Authority and acknowledgement

Each of the Scheme Shareholders:

- (a) irrevocably consents to Sirtex, the Bidders and the Bidders' Nominee doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Sirtex and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at the Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Sirtex.

9.5. No liability when acting in good faith

Neither Sirtex nor the Bidders and the Bidders' Nominee, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

9.6. Enforcement of Deed Poll

Sirtex undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against the Bidders and the Bidders' Nominee on behalf of and as agent and attorney for the Scheme Shareholders.

9.7. Stamp duty and registration fees

The Bidders' Nominee (or the Bidders on behalf of the Bidders' Nominee) will:

- (a) pay all stamp duties, registration fees and similar taxes payable or assessed as being payable in connection with this Scheme or the Deed Poll (including any fees, fines, penalties and interest in connection with those amounts); and
- (b) indemnify each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from its failure to comply with clause 9.7(a).

9.8. Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Sirtex, 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 Sirtex's registered office or at the office of the Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Sirtex Shareholder shall not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.9. Governing law and jurisdiction

- (a) This Scheme is governed by the law in force in New South Wales.
- (b) Each party irrevocably and unconditionally:
 - (i) submits to the non-exclusive jurisdiction of the courts of that place; and
 - (ii) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.