

InvoCare enters into scheme implementation deed with TPG

- InvoCare has entered into a scheme implementation deed with TPG under which TPG has agreed to acquire 100% of the shares in InvoCare by way of a scheme of arrangement (“Scheme”)
- InvoCare shareholders to receive \$12.70 per share in cash, inclusive of a fully franked special dividend of up to \$0.60 per InvoCare share
- The Cash Consideration represents a 42% premium to InvoCare’s closing share price on 6 March 2023
- For InvoCare shareholders who can utilise franking credits, the Cash Consideration when aggregated with the benefit of franking credits, represents implied value of up to approximately \$12.96
- The InvoCare Board unanimously recommends that shareholders vote in favour of the Scheme
- The Scheme is subject to various conditions, including approval by InvoCare shareholders at the Scheme meeting, with a Scheme booklet and an independent expert’s report to be provided to InvoCare shareholders

Overview of the scheme

InvoCare Limited (IVC:ASX) (“InvoCare”) has entered into a scheme implementation deed (“**Scheme Implementation Deed**”) with Eternal Aus BidCo Pty Ltd ACN 669 053 258 (**TPG BidCo**), an entity ultimately owned by funds managed or advised by TPG Capital Asia (“**TPG**”) or its related entities, to acquire all the issued capital of InvoCare which is not already held by it or its related entities for \$12.70 per share in cash (“**Cash Consideration**”) by way of a scheme of arrangement inclusive of a fully franked special dividend of up to \$0.60 per InvoCare share.

The Cash Consideration represents:

- a 42% premium to InvoCare’s undisturbed closing share price of \$8.95 per share on 6 March 2023¹;
- a 36% premium to InvoCare’s trading VWAP of \$9.34 per share following its FY22 results release on 27 February 2023 and ending on 6 March 2023²; and
- a 29% premium to InvoCare’s one-month VWAP of \$9.82 per share on 6 March 2023².

The Cash Consideration represents an implied equity value of \$1.8 billion and enterprise value of \$2.2 billion³. It also represents an implied transaction multiple of ~18x FY22A EV/EBITDA⁴ and ~37x FY22A P/E.

¹ Being the last trading date for InvoCare shares on ASX before the announcement of the acquisition of shares by TPG and receipt of the unsolicited non-binding indicative offer from TPG on 7 March 2023.

² VWAP calculation based on cumulative IRESS trading data.

³ Enterprise value calculated on a post AASB16 basis including \$182.5 million of leases based on the balance sheet dated 31 December 2022.

⁴ EV / FY22A EBITDA multiple presented on a pre-AASB16 basis, based on Operating EBITDA (on pre-AASB16 basis), and enterprise value calculation excluding \$182.5 million of leases based on the balance sheet dated 31 December 2022.

Under the Scheme Implementation Deed, InvoCare is permitted to pay a fully franked special dividend of up to \$0.60 per InvoCare share (“**Special Dividend**”). This will provide InvoCare shareholders who can utilise the benefit of franking credits with an additional benefit of up to approximately \$0.257 per InvoCare share. The benefit of the franking credits to an InvoCare shareholder will depend on their individual circumstances. For those InvoCare shareholders who can utilise the benefit of franking credits, the Cash Consideration, when aggregated with the benefit of franking credits, represents implied value of up to approximately \$12.96, representing a 45% premium to the closing price of InvoCare shares on 6 March 2023.

To the extent that the Special Dividend is paid, the consideration to be received under the Scheme will be reduced by the cash amount of the Special Dividend. The quantum of the Special Dividend will depend upon the availability of franking credits.

Scrip consideration alternative

All Cash Consideration is the default consideration under the Scheme. If the Scheme is implemented, InvoCare shareholders that do not elect a scrip consideration option will receive all Cash Consideration.

As an alternative to receiving all Cash Consideration, InvoCare shareholders have the option to elect to receive one of several scrip consideration options that would enable InvoCare shareholders to retain an interest in the InvoCare business after the proposed Scheme has been implemented (“**Scrip Consideration Options**”).

Under the Scrip Consideration Options, subject to the qualifications below, eligible InvoCare shareholders can elect to receive one of the following:

- **Mixed consideration option 1:** Cash Consideration in respect of 75% of their InvoCare shares, plus Class B shares in Eternal Aus HoldCo Ltd (ACN 669 042 782) (“**HoldCo**”), an unlisted newly incorporated entity which is a holding company of TPG Bidco, in respect of the remaining 25% of their InvoCare shares;
- **Mixed consideration option 2:** Cash Consideration in respect of 50% of their InvoCare shares, plus Class B shares in HoldCo in respect of the remaining 50% of their InvoCare shares;
- **Mixed consideration option 3:** Cash Consideration in respect of 25% of their InvoCare shares, plus Class B shares in HoldCo in respect of the remaining 75% of their InvoCare shares;
- **All scrip consideration option:** 100% Class B shares in HoldCo in respect of 100% of their InvoCare shares; or
- **Custom consideration option:** A custom percentage of Cash Consideration and Class B Shares in HoldCo (as agreed with TPG BidCo, in its absolute discretion) in respect of their InvoCare shares. Certain key management personnel of InvoCare have agreed to take up this option to exchange at least 50% of their InvoCare shares received as a result of the accelerated vesting of their InvoCare equity incentives for Class B shares in HoldCo.

The Scrip Consideration Options will only be available to InvoCare shareholders if the minimum scrip threshold is satisfied. That is, if elections made would result in InvoCare shareholders holding, in aggregate, at least 5%⁵ of the total issued capital of HoldCo as at the implementation date (“**Minimum Scrip Threshold**”). If the Minimum Scrip Threshold is not satisfied, all InvoCare shareholders will receive all Cash Consideration. A scaleback mechanism will apply if elections made by eligible InvoCare shareholders would result in InvoCare shareholders holding, in aggregate, more than 20% of the total issued capital of HoldCo on the implementation of the Scheme (the “**Maximum Scrip Threshold**”).

⁵ or such lesser percentage as notified by TPG BidCo to InvoCare at least 3 Business Days prior to the date of the Scheme Meeting.

Each HoldCo share issued as scrip consideration will be an unlisted Class B share in the capital of HoldCo. InvoCare shareholders who receive Class B shares in HoldCo will become parties to the HoldCo Shareholders' Deed, a term sheet of which is included as an attachment to the Scheme Implementation Deed.

If a Special Dividend is declared and paid, an InvoCare Shareholder who elects to receive a Scrip Consideration Option will also receive any Special Dividend that may be declared and paid by InvoCare.

Board recommendation

The Board of InvoCare unanimously recommends that InvoCare shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) in an independent expert's report that the Scheme is in the best interests of InvoCare shareholders⁶. Subject to these same qualifications, all directors intend to vote all the InvoCare shares in which they have a relevant interest in favour of the Scheme. The Board of InvoCare makes no recommendation in relation to the scrip consideration.

InvoCare Chairman, Bart Vogel said:

"The Board is unanimous in its view that this transaction is in the best interests of InvoCare shareholders. The transaction represents a significant premium of 42% to InvoCare's undisturbed closing share price. The Board notes that the Cash Consideration payable under the Scheme delivers certainty of value to InvoCare shareholders and unanimously recommends that shareholders vote in favour of the Scheme."

Details of the Scheme Implementation Deed

The implementation of the Scheme is subject to conditions customary for a transaction of this nature, including:

- InvoCare shareholder approval;
- approval by the New South Wales Supreme Court;
- approval by the Australian Foreign Investment Review Board and New Zealand Overseas Investment Office;
- an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of InvoCare shareholders⁷;
- no InvoCare material adverse change;
- no prescribed occurrences; and
- no restraints.

It is also a condition to implementation of the Scheme that all existing InvoCare management equity and cash incentives are dealt with in accordance with the Scheme Implementation Deed.

TPG has advised InvoCare that it expects to fund the Cash Consideration through equity committed by certain funds managed or advised by TPG, and third-party financing. Implementation of the Scheme is not subject to a financing or funding condition.

The Scheme Implementation Deed contains customary exclusivity provisions, including "no shop", "no talk", and "no due diligence" restrictions, a "notification" obligation, as well as a "matching right".

The Scheme Implementation Deed also includes certain circumstances in which a break fee of \$18.3 million would be payable to TPG, or a reverse break fee of \$18.3 million would be payable to InvoCare.

⁶ Other than the TPG shareholders.

⁷ Other than the TPG shareholders.

A complete copy of the Scheme Implementation Deed (which sets out all conditions precedent to the Scheme and other terms relating to the Scheme and its implementation) is attached to this announcement.

InvoCare 1H FY23 Trading Update

The near-term macro-environment remains challenging and market volumes have softened in Q2 FY23. The impact of the 2023 flu season has been comparatively benign to date.

While softer market volumes and ongoing inflation has negatively impacted margins and operating leverage, InvoCare has continued to see less week-to-week volatility in demand for its services during 1H FY23 and case averages have remained strong in 1H FY23 compared to the prior comparable period.

InvoCare's half year accounts for the six months ended 30 June 2023 are still subject to review and finalisation by Deloitte (the company's auditors), however InvoCare is able to provide the following guidance⁸:

- operating EBITDA (including AASB 15) is expected to be \$61 million-\$63 million (HY22: \$68.5 million, including AASB 15); and
- the impact on Operating EBITDA of cycling AASB 15 will be approximately \$5 million-\$6 million

InvoCare intends to release its financial results for the six months ended 30 June 2023 on Monday, 28 August 2023.

Indicative timetable and next steps

A Scheme booklet that will contain important information is currently expected to be sent to InvoCare shareholders in September 2023. The Scheme booklet will contain information relating to the Scheme and an independent expert's report on whether the Scheme is in the best interests of InvoCare shareholders.

The scheme of arrangement is subject to a number of conditions, including approval of InvoCare shareholders at a Scheme meeting, which is expected to be held in October 2023.

If the Scheme is approved by InvoCare shareholders and the other conditions precedent are satisfied or waived, the Scheme is expected to be implemented by November 2023.

InvoCare is being advised by Gresham, Goldman Sachs and Clayton Utz.

-ENDS-

This announcement has been authorised by the Board of InvoCare Limited.

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BACKGROUND

InvoCare, headquartered in Sydney, is a leading provider of funeral services in Australia, New Zealand, and Singapore, and operates private memorial parks and crematoria in Australia and New Zealand. It is also a leading provider of pet cremation services in Australia.

⁸ Financial guidance is on a pre-AASB17 basis, the impact of which is still being finalised with InvoCare's auditors; notwithstanding this, it is expected the impact of adoption of this accounting standard on profit and loss will be at a non-operating level (consistent with existing treatment of prepaid funeral contracts).

Scheme Implementation Deed

InvoCare Limited
Target

Eternal Aus BidCo Pty Ltd
Bidder

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Our reference 20394/13515/80125396

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Scheme Implementation Deed

Date 9 August 2023

Parties **InvoCare Limited ACN 096 437 393** of Level 5, 40 Mount Street, North Sydney, NSW 2060 (**Target**)

Eternal Aus BidCo Pty Ltd ACN 669 053 258 of Level 38, South Tower, 80 Collins Street, Melbourne, Victoria 3000 (**Bidder**)

Background

- A. The parties have proposed that Bidder will acquire all of the ordinary shares in Target (other than those already held by a Bidder Group Member) by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders.
- B. Target has agreed to propose and, if approved, Target and Bidder have agreed to implement the scheme of arrangement on the terms and conditions of this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

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

Accounting Standards means the requirements of the Corporations Act about the preparation and contents of financial reports, the accounting standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

Aggregate Cash Consideration means the aggregate of the Cash Consideration payable to Scheme Shareholders under the Scheme (taking into account all valid Elections made on or before the Election Date and the terms of the Scheme).

Aggregate Scrip Consideration means the aggregate number of HoldCo Shares issued to Scheme Shareholders under the Scheme (taking into account all valid Elections made on or before the Election Date and the terms of the Scheme).

All Cash Consideration means the Cash Consideration for each Scheme Share held by a Scheme Shareholder.

All Scrip Consideration means the Scrip Consideration for each Scheme Share held by a Scheme Shareholder.

All Scrip Election Option means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the All Scrip Consideration for the Scheme Shares held by that Target Shareholder.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act.

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ASX means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

ATO means the Australian Taxation Office.

Bidder Counterproposal has the meaning given in clause 12.6(a)(v).

Bidder Deal Team means Joel Thickins, Vincent Wong and Daniel Lahav.

Bidder Group means Bidder and each of its Related Bodies Corporate, and a reference to a '**Bidder Group Member**' or a '**member of the Bidder Group**' is to Bidder or any of its Related Bodies Corporate.

Bidder Indemnified Parties means Bidder, its Related Bodies Corporate and their respective directors, officers and employees.

Bidder Information means information regarding the Bidder Group provided by or on behalf of Bidder to Target in writing for inclusion in the Scheme Booklet as required by clause 6.3(a) and for which Bidder is responsible in accordance with clause 6.5.

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

Bidder Shareholding means the 28,787,740 shares in the Target in which Blue Eternal Holdings Pte. Ltd., TPG Asia VIII SF Pte. Ltd., TPG Asia VIII Finance LP, TPG Asia VIII (B) BL, LP, TPG Asia VIII (B), LP, and TPG Asia VIII (A), LP have a combined Relevant Interest and economic interest in, as described in the substantial holder notice announced to ASX on 8 March 2023.

Break Fee means \$18,300,000.

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

Cash Consideration means an amount of \$12.70 for each Scheme Share, as adjusted in accordance with clause 5.9(b) (if applicable).

Change of Control Requirements has the meaning given in clause 7.5.

Claim means any claim, demand, legal proceedings or cause of action, including a claim, demand, legal proceedings or cause of action:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or equity; or
- (d) under statute (including the Australian Consumer Law, being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or Part VI of that Act, or like provision in any state or territory legislation),

in any way relating to a Transaction Document or the Transaction, and includes a claim, demand, legal proceeding or cause of action arising under an indemnity in this deed.

Class B Share means a Class B Share in the capital of HoldCo having the rights set out in the HoldCo Constitution and the HoldCo SHD.

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Competing Proposal means any proposal, offer, expression of interest, agreement, arrangement or transaction which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associates):

- (a) directly or indirectly acquiring a or having the right to acquire:
 - (i) a Relevant Interest in;
 - (ii) a legal, beneficial or economic interest (including by way an equity swap, contract for difference or other derivative, or similar transaction or arrangement) in; or
 - (iii) control of,
 - 20% or more of the Target Shares;
- (b) directly or indirectly acquiring Control of Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of:
 - (i) all or a material part of the business conducted by the Target Group taken as a whole; or
 - (ii) any material assets of the Target Group taken as a whole;
- (d) otherwise directly or indirectly acquiring or merging with Target; or
- (e) requiring Target to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, members’ or creditors’ scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.

For the avoidance of doubt, each successive material modification or variation of any proposal, offer, expression of interest, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Condition Precedent means each of the conditions set out in clause 3.1.

Confidentiality and Process Agreement means the confidentiality and process agreement between Target and TPG Capital (Australia) Pty Ltd dated 15 May 2023.

Control has the meaning given in section 50AA of the Corporations Act.

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

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

Court means the New South Wales Supreme Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

Custodian has the meaning given in the HoldCo SHD.

Custom Consideration means, in respect of a Scheme Shareholder who has made a Custom Consideration Election Option:

- (a) the Cash Consideration for such number of Scheme Shares; plus

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(b) the Scrip Consideration for such number of Scheme Shares,

as agreed with Bidder (in its absolute discretion) in writing.

Custom Consideration Election Option means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Custom Consideration for the Scheme Shares held by that Target Shareholder.

Data Room means the two online electronic data rooms in connection with the Transaction established and maintained by or on behalf of Target as at 5.00pm on 1 August 2023, which could be accessed at:

<https://dataroom.ansarada.com/ProjectEdinburghDR%7C123353/6365228/TermsOfAccess.asp> and

<https://dataroom.ansarada.com/067b6cswebko%7C130143/6457039/TermsOfAccess.asp> and the contents of which are set out in an electronic index sent by Clayton Utz to Gilbert + Tobin on or before the date of this deed.

Debt Commitment Letter means the binding, credit-approved, executed commitment letter and accompanying term sheets from certain banks or other financial institutions addressed to Bidder and dated on or about the date of this deed.

Debt Financing means the financing commitments set out in the Debt Commitment Letter.

Deed Poll means a deed poll to be entered into by Bidder and HoldCo substantially in the form of Attachment 3 under which Bidder and HoldCo covenant in favour of the Scheme Shareholders to perform their obligations under the Scheme.

Disclosing Party has the meaning given in clause 8.4(b)(i).

Disclosure Letter means a letter identified as such provided by Target to Bidder and countersigned by Bidder on or prior to entry into this deed.

Disclosure Materials means:

- (a) the documents and information (including written management presentations and all written responses from Target and its Related Persons to requests for further information made by Bidder and its Related Persons) contained in the Data Room; and
- (b) the Disclosure Letter.

D&O Run-off Policy has the meaning given in clause 10.3(b).

EBITDA means the statutory earnings before interest, taxes, depreciation and amortisation for the Target Group on a consolidated basis, adjusted to include cash lease expenses for the Target Group and otherwise calculated on the same basis as Target's full year financials for the financial year ended 31 December 2022 (as set out in Target's annual report for that financial year) were calculated.

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

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

Election means:

- (a) a Mixed Election Option 1;
- (b) a Mixed Election Option 2;

- (c) a Mixed Election Option 3;
- (d) an All Scrip Election Option; or
- (e) a Custom Consideration Election Option.

Election Date means 7.00pm on the date which is at least 5 Business Days prior to the date of the Scheme Meeting, or such other date as agreed in writing between Bidder and Target.

Election Form means the form of election under which a Target Shareholder (other than an Excluded Shareholder) is offered the opportunity to make an Election.

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

End Date means 31 December 2023 or such other date as agreed in writing by Target and Bidder.

Entity Declaration has the meaning given in clause 18.14(b).

Equity Commitment Letters means the binding, executed commitment letters dated on or before the date of this deed and addressed to one or more Bidder Group Members and Target.

Equity Financing means the financing commitments set out in the Equity Commitment Letters.

Excluded Shareholder means any Target Shareholder who is a Bidder Group Member or any Target Shareholder who holds any Target Shares on behalf of, or for the benefit of, any Bidder Group Member and does not hold Target Shares on behalf of, or for the benefit of, any other person.

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

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

Existing Financing means:

- (a) the facilities provided under a "Syndicated Facility Agreement" dated 16 February 2018 between, amongst others, the Target and Australia and New Zealand Banking Group Limited (as Agent);
- (b) the notes issued by the Target under a "Note Purchase Agreement" dated 16 February 2018;
- (c) the transactional facilities provided pursuant to the letter of offer entitled 'Linked Facility Offer Letter (Restatement) – InvoCare Group' dated 24 March 2021 between, among others, the Target and Australia and New Zealand Banking Group Limited ACN 005 357 522;
- (d) the transactional facilities provided pursuant to the New Zealand law governed institutional credit agreement dated 14 October 2021 between, among others, ANZ Bank New Zealand Limited, InvoCare Holdings NZ Limited and InvoCare New Zealand Limited;

- (e) the asset financing facilities provided pursuant to the master facility agreement dated 18 December 2019 between, among others, InvoCare Australia Pty Ltd and Westpac Banking Corporation (ABN 33 007 457 141); and
- (f) swap and derivative agreements or arrangements entered into in connection with the financing referred to in (a) through (e) above.

Fairly Disclosed means disclosed in sufficient detail to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Scheme to identify the nature and potential impact of the relevant fact, matter, circumstance or event.

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

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of (without double counting):

- (a) moneys borrowed or raised and debit balances at banks or financial institutions (including for the avoidance of doubt all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured));
- (b) any advance, loan, bill, bond, debenture, note or similar instrument;
- (c) receivables sold or discounted (other than any receivables to the extent they are sold or discounted on a non-recourse basis);
- (d) guarantee or letter of credit;
- (e) swap, option, hedge, forward, futures or similar transaction;
- (f) any drawing, acceptance, endorsement, collecting or discounting arrangement;
- (g) any finance or capital lease to the extent required in accordance with Accounting Standards to be treated as a borrowing;
- (h) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

FIRB means the Australian Foreign Investment Review Board.

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

FUM means the prepaid funds held under management in trust as set out in Folder 02.02.C.iv of the Data Room, which for the avoidance of doubt includes the funds held by Over Fifty Guardian Friendly Society Limited (ACN 087 649 063) as trustee for the Over Fifty Guardian Prepaid Funeral Fund Number 6.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC, ASX, the Australian Competition and Consumer Commission, FIRB, the Takeovers Panel and equivalent bodies outside Australia).

HoldCo means Eternal Aus HoldCo Ltd (ACN 669 042 782).

HoldCo Constitution means the constitution of HoldCo.

HoldCo Share means a fully paid Class B Share in the capital of HoldCo to be provided to Scheme Shareholders under the Scheme.

HoldCo SHD means the shareholders' deed in respect of the affairs of HoldCo to be entered into by the shareholders of HoldCo, amongst others, on substantially the terms set out in the term sheet in Attachment 4 or such other form as agreed in writing by the parties.

Implementation Committee has the meaning given in clause 7.4(a).

Implementation Date the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.

Independent Expert means the independent expert in respect of the Scheme appointed by Target to prepare the Independent Expert's Report.

Independent Expert's Report means the report to be issued by the Independent Expert in connection with the Scheme, such report to be included in or to accompany the Scheme Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Target Shareholders (other than Excluded Shareholders) and the reasons for holding that opinion.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address shown in the Target Share Register at 7.00 pm on the Scheme Record Date is a place outside Australia and its external territories, unless Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Shareholder with HoldCo Shares when the Scheme becomes Effective.

Insolvency Event means in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days);
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or
- (f) the entity being deregistered as a company or otherwise dissolved,

or any other like event, matter or circumstance occurring in relation to an entity in another jurisdiction.

Intellectual Property Rights means:

- (a) patents, designs, domain names, brands, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);

- (c) all rights to have information (including trade secrets, know-how, operating procedures and technical information, formulae, computer programs, data bases, designs, design rights) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world.

Interested Person has the meaning given in clause 3.1(a)(i)A.

Listing Rules means the official listing rules of ASX.

Material Adverse Change means an event, change, condition, matter, circumstance or thing occurring or becoming known to Bidder on or after, or being reasonably likely to occur after, the date of this deed, which, whether individually or when aggregated with all events, changes, conditions, matters, circumstances or things that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have, the effect of:

- (a) a diminution in the consolidated net assets of the Target Group (excluding FUM and pre-paid liabilities) taken as a whole, by at least \$50,000,000, as compared to what the consolidated net assets of the Target Group could reasonably have expected to have been but for the relevant event, change, condition, circumstance, thing, occurrence or matter; or
- (b) a diminution in the consolidated EBITDA over a 12 month period of the Target Group taken as a whole, of at least \$20,000,000 as compared to what the consolidated EBITDA of the Target Group could reasonably have expected to have been but for the relevant event, change, condition, circumstance, thing, occurrence or matter,

in each case, other than those events, changes, conditions, matters, circumstances or things:

- (c) that were Fairly Disclosed in:
 - (i) the Disclosure Materials;
 - (ii) an announcement made by Target or a Target Group Member to the ASX in the three years prior to the date of this deed;
 - (iii) a publicly available document lodged by Target or a Target Group Member with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection) in the three years prior to the date of this deed; or
 - (iv) a publicly available document which would be disclosed in a search of the PPS Register or the public records maintained by the Relevant Courts (as defined in the Disclosure Letter), in relation to a Target Group Member as at the applicable dates set out in the Disclosure Letter;
- (d) that are within the actual knowledge of Bidder prior to the date of this deed;
- (e) arising from changes in economic or business conditions (including changes to interest rates, exchange rates, commodity prices or markets (including domestic or international financial markets)) other than where such matters have a materially disproportionate effect on the Target Group as compared to other participants in the industry in which the Target Group operates;
- (f) arising from any change in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or policy of a Government Agency;
- (g) required or expressly permitted to be done or procured by the Target Group under a Transaction Document;

- (h) agreed to, or requested by, Bidder in writing; or
- (i) arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like.

Maximum Cash Consideration means a cash amount equal to the value of the Cash Consideration multiplied by the total number of Scheme Shares.

Maximum Scrip Threshold means 20% of the total issued capital of HoldCo as at the Implementation Date.

Minimum Scrip Threshold means 5%, or such lesser percentage as notified by Bidder to Target in writing at least 3 Business Days prior to the date of the Scheme Meeting, of the total issued capital of HoldCo as at the Implementation Date.

Mixed Consideration Option 1 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 75% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 25% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 1.

Mixed Consideration Option 2 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 50% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 50% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 2.

Mixed Consideration Option 3 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 25% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 75% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 3.

Mixed Election Option 1 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 1 for the Scheme Shares held by that Target Shareholder.

Mixed Election Option 2 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 2 for the Scheme Shares held by that Target Shareholder.

Mixed Election Option 3 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 3 for the Scheme Shares held by that Target Shareholder.

Non-public Information means any non-public information about the business or affairs of the Target Group.

OIO means the New Zealand Overseas Investment Office.

OIO Act means the *Overseas Investment Act 2005* (NZ).

Options means the options to acquire Target Shares issued under Target's long term incentives plans as listed in Schedule 3.

Performance Rights means the performance rights awarded or granted under Target's long-term incentive schemes and employee share schemes as listed in Schedule 3.

Permitted Encumbrance means any Encumbrance:

- (a) granted by any member of the Target Group in the ordinary course of business;
- (b) which arises by operation of law or legislation;
- (c) granted by any Target Group Member in connection with the Existing Financing;
- (d) which is permitted under the Debt Commitment Letter or the Debt Financing; or
- (e) which is Fairly Disclosed in the Disclosure Letter.

Prescribed Occurrence means other than anything:

- (a) Fairly Disclosed in:
 - (i) the Disclosure Materials; or
 - (ii) an announcement made by Target or a Target Group Member to the ASX in the three years prior to the date of this deed;
- (b) which is within the actual knowledge of Bidder before the date of this deed;
- (c) required by any applicable law or regulation;
- (d) required or expressly permitted to be done or procured by the Target Group in connection with a Transaction Document; or
- (e) agreed to, or requested by, Bidder in writing,

the occurrence of any of the following:

- (f) Target converting all or any of its securities (including the Target Shares) into a larger or smaller number;
- (g) any Target Group Member resolving to reduce its share capital in any way;
- (h) a Target Group Member entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (i) a Target Group Member issuing shares (including Target Shares), or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a right or an option, other than to a wholly-owned Subsidiary of Target;
- (j) a Target Group Member issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights or options or debt securities);
- (k) a Target Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;

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- (l) a Target Group Member making any change to its constitution or constituent documents, other than where a Target Group Member that is not material in the context of the Target Group (taken as a whole) makes a change to its constitution or constituent document that does not materially affect the Transaction or the Target Group (or its business);
- (m) a Target Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property (whether by way of a single transaction or series of related transactions);
- (n) a Target Group Member creating or granting an Encumbrance, or agreeing to create or grant an Encumbrance, in respect of the whole, or a substantial or material part, of the business, assets or property of the Target Group, other than a Permitted Encumbrance; or
- (o) an Insolvency Event occurs in relation to a Target Group Member.

PPS Register means the register established under the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Recommendation has the meaning given to that term in clause 8.1(b)(i).

Regulator’s Draft means the draft of the Scheme Booklet in a form that is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act.

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

Related Bodies Corporate has the meaning set out in section 50 of the Corporations Act.

Related Person means in respect of a person, including each party or its Related Bodies Corporate:

- (a) a director, officer, employee of that person;
- (b) an adviser of that person (and each director, officer, employee or contractor of that adviser);
- (c) an agent or representative of that person; and
- (d) a Related Body Corporate of that person.

Relevant Employee has the meaning given in clause 7.1(a)(iv)G.1)a).

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Relevant Person has the meaning given in clause 7.2(d)(i).

Restricted Shares means the restricted Target Shares issued under Target’s exempt employee share scheme as listed in Schedule 3.

Retention Agreements means the agreements entered into between a member of the Target Group and certain directors, officers or employees of the Target Group in respect of their participation in a retention plan offered by the Target Group.

Reverse Break Fee means \$18,300,000.

RG 60 means Regulatory Guide 60 issued by ASIC in September 2020.

Scaleback Mechanism means the scaleback mechanism set out in clause 5.8.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, the form of which is attached as Attachment 2, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

Scheme Booklet means the scheme booklet to be prepared by Target in respect of the Scheme pursuant to section 412 of the Corporations Act and in accordance with the terms of this deed (including clause 6.2(a)) to be dispatched to the Target Shareholders and which must include or be accompanied by:

- (a) a copy of the Scheme;
- (b) an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;
- (c) the Independent Expert's Report;
- (d) a copy or summary of this deed;
- (e) a copy of the executed Deed Poll;
- (f) a notice of meeting;
- (g) a proxy form(s); and
- (h) an Election Form.

Scheme Consideration means in respect of a Scheme Shareholder (depending on the Elections made by the Election Date and subject to the Scaleback Mechanism and the terms of the Scheme):

- (a) All Cash Consideration;
- (b) Mixed Consideration Option 1;
- (c) Mixed Consideration Option 2;
- (d) Mixed Consideration Option 3;
- (e) All Scrip Consideration; or
- (f) Custom Consideration.

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

Scheme Record Date means 7.00pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.

Scheme Shareholder means a Target Shareholder as at the Scheme Record Date, other than any Excluded Shareholder.

Scheme Shares means all Target Shares held by the Scheme Shareholders as at the Scheme Record Date and, for the avoidance of doubt, does not include any Target Share held by an Excluded Shareholder as at the Scheme Record Date.

Scrip Consideration means such number of HoldCo Shares for each Scheme Share as determined by Bidder at least 5 Business Days prior to the First Court Date, as adjusted in accordance with clause 5.9(b) (if applicable).

Second Court Date means the first day on which an application made to the Court for an order under paragraph 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.

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.

Share Rights means the rights to Target Shares issued under Target's employee share schemes as listed in Schedule 3.

Special Dividend has the meaning given in 5.9(a).

Sub Notification has the meaning given in clause 2.2(a).

Subsidiary has the meaning given in section 9 of the Corporations Act.

Superior Proposal means a bona fide, written Competing Proposal in relation to the acquisition of more than 50% of the issued securities of Target which is received by Target and which the Target Board determines, acting reasonably and in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having obtained written advice from its legal adviser and financial advisers):

- (a) is reasonably capable of being valued and implemented; and
- (b) would, if completed in accordance with its terms, be more favourable to Target Shareholders (other than Excluded Shareholders) than the Transaction (as the Transaction may be amended or varied following the application of the matching right set out in clause 12.6),

taking into account all aspects of the Competing Proposal and the Transaction (as the Transaction may be amended or varied following the application of the matching right set out in clause 12.6), including the consideration (including the value, nature, liquidity and attractiveness of any scrip based consideration), conditions, the identity, reputation and financial condition of the person making the Competing Proposal, and all relevant legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant Competing Proposal being completed in accordance with its terms.

Takeovers Panel means the Australian Takeovers Panel.

Target Board means the board of directors of Target.

Target Cash Incentives means all incentives, awards, rights or entitlements (whether conditional or otherwise) which:

- (a) any member of the Target Group has granted, or has offered or agreed to grant, to any director, officer or employee of any member of the Target Group; and
- (b) may be settled or require a payment in cash by any member of the Target Group,

including, for the avoidance of doubt, all incentives, awards, rights or entitlements (whether conditional or otherwise) which have been granted under or in connection with:

- (c) Target's short term incentive plan in respect of the financial year ending 31 December 2023; or
- (d) the Retention Agreements.

Target Deal Team means Olivier Chretien, Adrian Gratwicke, Tim Higgins and Heidi Aldred.

Target Director means any director of Target comprising part of the Target Board.

Target Equity Incentives means the Options, Share Rights, Performance Rights and Restricted Shares as listed in Schedule 3.

Target Group means Target and each of its Related Bodies Corporate, and a reference to a 'Target Group Member' or a 'member of the Target Group' is to Target or any of its Related Bodies Corporate.

Target Group IP means all Intellectual Property Rights owned by the Target Group, being those Intellectual Property Rights in the Data Room.

Target Incentives means:

- (a) the Target Equity Incentives; and
- (b) the Target Cash Incentives.

Target Indemnified Parties means Target and its Related Bodies Corporate and Related Persons.

Target Information means information regarding the Target Group prepared by Target for inclusion in the Scheme Booklet, which for the avoidance of doubt comprises the entirety of the Scheme Booklet other than the Bidder Information, the Independent Expert's Report (or references to the Independent Expert's analysis or conclusions), any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external advisor to Target.

Target Registry means Link Market Service Limited of Level 12, 680 George St Sydney, NSW 2000.

Target Representations and Warranties means the representations and warranties of Target set out in Schedule 1.

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

Target Share Register means the register of members of Target maintained by the Target Registry in accordance with the Corporations Act.

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

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*), compulsory loan or withholding or similar charge that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.

Tax Act means the *Income Tax Assessment Act 1997 (Cth)*.

Tax Confirmations has the meaning given in clause 5.9(a)(ii).

Third Party means a person other than Target, Bidder or their respective Related Bodies Corporate, or Bidder's Associates.

Third Party IP means the Intellectual Property Rights used in the conduct of the Target Group's business that are not owned by a member of the Target Group.

Timetable means the indicative timetable for the implementation of the Transaction set out in Attachment 1.

Transaction means the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed.

Transaction Document means:

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

Treasurer means the Treasurer of the Commonwealth of Australia.

1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;

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- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed; and
- (t) a reference to the 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 Interpretation of inclusive expressions

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

1.4 Business Day

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

1.5 Deed components

This deed includes any schedule.

1.6 Target knowledge, belief or awareness

- (a) If a representation or warranty is given so far as Target is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Target is limited to and deemed only to comprise the facts, matters and circumstances of which the Target Deal Team is actually aware as at the date of this deed, each member of the Target Deal Team having made reasonable enquiries of their direct reports.
- (b) The knowledge, belief or awareness of any other person will not be imputed to the Target nor any other Target Group Member (except to the extent referred to in clause 1.6(a)).

- (c) Without limiting clause 10, none of those persons referred to in clause 1.6(a) will bear any personal liability in respect of the Target Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.7 Bidder knowledge, belief or awareness

- (a) In this deed, a reference to the knowledge, belief or awareness of Bidder or a Bidder Group Member's knowledge, belief or awareness is limited to and deemed only to comprise the actual knowledge, belief or awareness of the Bidder Deal Team as at the date of this deed having made reasonable enquiries of their direct reports.
- (b) The knowledge, belief or awareness of any person other than the persons referred to in clause 1.7(a) will not be imputed to Bidder nor any other Bidder Group Member (except to the extent referred to in clause 1.7(a)).
- (c) Without limiting clause 10, none of the persons referred to in clause 1.7(a) as being agreed between the parties in writing will bear any personal liability in respect of the Bidder Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.8 Best and reasonable endeavours

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

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of:
- (i) any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
 - (ii) immaterial expenses or costs, including costs of advisers,
- to procure the relevant thing (except, in each case, in circumstances that are commercially onerous or unreasonable in the context of this deed); or
- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best, all reasonable endeavours or similar where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

2. Agreement to propose the Transaction

2.1 Proposal and implementation of the Scheme

- (a) Target agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) Bidder agrees to assist Target to propose the Scheme on and subject to the terms and conditions of this deed.

- (c) The parties agree to implement the Scheme on and subject to the terms and conditions of this deed.

2.2 Bidder may elect Subsidiary

- (a) Target agrees that Bidder may elect, under this clause 2.2, a wholly-owned Subsidiary of Bidder to acquire all of the Target Shares under the Scheme by giving written notice to Target on or before the date that is five Business Days before an advanced draft of the Scheme Booklet is submitted to ASIC for review (**Sub Notification**).
- (b) Bidder warrants that if it elects a wholly-owned Subsidiary to acquire all of the Target Shares pursuant to clause 2.2(a), Bidder and the wholly-owned Subsidiary will both enter into the Deed Poll with HoldCo and Bidder will continue to be bound by this deed, the Deed Poll and the Confidentiality and Process Agreement (including, but not limited to, the obligation to pay (or, if applicable, procure the payment by the wholly-owned Subsidiary) of the Scheme Consideration in accordance with clause 5 and the terms of the Scheme) and will not be released from any obligations or liabilities under this deed or the Deed Poll following the Sub Notification.
- (c) For the avoidance of doubt, Bidder warrants that if it elects a wholly-owned Subsidiary to acquire all of the Target Shares pursuant to clause 2.2(a), it will ensure the wholly-owned Subsidiary completes the Transaction in accordance with the terms of the Transaction Documents.

3. Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to implementation of the Scheme are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Regulatory Approvals:**
 - (i) **(FIRB approval):** before 8.00am on the Second Court Date, any of the following occur:
 - A. Bidder has received a written notice on or after the date of this deed under FATA from the Treasurer (or the Treasurer’s delegate) stating, or to the effect, that the Commonwealth Government does not object to certain co-investment vehicles (and / or the limited partners thereof) and other entities affiliated with Bidder (each an **Interested Person**) acquiring an interest in Target pursuant to the Scheme on the acquisition of the Target Shares contemplated by the Scheme;
 - B. following Bidder notifying the Treasurer in writing of each Interested Person and the interest that person will acquire pursuant to the Scheme, the Treasurer becomes precluded by the passage of time from making any order or decision under Division 2 of Part 3 of FATA in respect of the acquisition of the Target Shares contemplated by the Scheme; or

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- C. where an interim order is made under section 68 of the FATA in respect of each Interested Person acquiring an interest in Target pursuant to the Scheme on the acquisition of the Target Shares contemplated by the Scheme, the subsequent period for making an order or decision under Part 3 of the FATA elapses without the Treasurer making such an order or decision; and
- (ii) **(OIO approval):** before 8.00 am on the Second Court Date, Bidder has received all consents required under the *Overseas Investment Act 2005* (NZ) and the *Overseas Investment Regulations 2005* (NZ) for, including in connection with any Interested Person acquiring an interest in Target pursuant to the Scheme on, the implementation of the Scheme and such consents have not been withdrawn, suspended or revoked before 8.00am on the Second Court Date.
- (b) **ASIC and ASX:** before 8.00am on the Second Court Date, ASIC and ASX issue or provide all consents, waivers, relief or approvals as are necessary or which Target and Bidder agree (each acting reasonably) are desirable to implement the Scheme and such consents, approvals, waivers, relief or approvals have not been withdrawn, cancelled, revoked or adversely amended.
- (c) **Restraints:** no law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree is made by a court of competent jurisdiction or Government Agency, which restrains, prohibits or impedes (or could reasonably be expected to restrain, prohibit or impede) implementation of the Scheme is in effect at 8.00am on the Second Court Date.
- (d) **Target Shareholder approval:** Target Shareholders (other than Excluded Shareholders) agree to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act.
- (e) **Independent Expert:** the Independent Expert:
- (i) issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders (other than Excluded Shareholders) before the time when the Scheme Booklet is registered by ASIC; and
- (ii) does not formally change its conclusion or withdraw its Independent Expert's Report before 8.00am on the Second Court Date.
- (f) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act.
- (g) **No Prescribed Occurrence:** no Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (h) **No Material Adverse Change:** no Material Adverse Change occurs between the date of this deed and 8.00am on the Second Court Date.
- (i) **Target Incentives:** Target and holders of Target Incentives have taken all necessary steps by 8.00am on the Second Court Date, including by executing all necessary documents, to ensure that the Target Incentives are dealt with in accordance with clause 6.7 and otherwise on terms acceptable to Bidder.

3.2 Reasonable endeavours

- (a) Target must, to the extent it is within its power to do so, use reasonable endeavours to procure that:

- (i) the Conditions Precedent in clauses 3.1(e) (*Independent Expert*), 3.1(g) (*No Prescribed Occurrence*) and 3.1(h) (*No Material Adverse Change*) and 3.1(i) (*Target Incentives*), are satisfied as soon as practicable after the date of this deed; and
- (ii) continue to be satisfied at all times until the last time that the relevant clause provides that such Condition Precedent is to be satisfied.
- (b) Bidder must, to the extent it is within its power to do so, use reasonable endeavours to procure that the Condition Precedent in clause 3.1(a) (*Regulatory Approvals*) is satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the last time that the relevant clause provides that such Condition Precedent is to be satisfied.
- (c) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that:
- (i) each of the Conditions Precedent in clauses 3.1(b) (*ASIC and ASX*), 3.1(d) (*Target Shareholder approval*) and 3.1(f) (*Court Approval*) is satisfied by taking the steps required by it under clause 6;
- (ii) the Condition Precedent in clause 3.1(c) (*Restraints*) is not triggered; and
- (iii) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent being or remaining satisfied.
- (d) Without limiting this clause 3.2, Bidder must:
- (i) to the extent to which it has not done so, promptly and in any event within 7 Business Days after the date of this deed apply for the Regulatory Approvals and provide to Target a copy of the applications provided to the Government Agencies after the date of this deed as soon as practicable after they have been provided to the relevant Government Agencies;
- (ii) take all steps reasonably required, and for which it is responsible for, under the Regulatory Approval processes, including responding to requests for information from the relevant Government Agencies at the earliest practicable time; and
- (iii) keep Target informed of progress in relation to the Regulatory Approvals (including in relation to any material matters raised by, or conditions or other arrangements proposed by the relevant Government Agencies),
- provided that before providing any document or other information to Target, Bidder may redact or exclude any part of that document or information, or withhold any part of that information, which Bidder considers contains or constitutes information which is confidential, commercially sensitive, competitively sensitive and/or privileged to a Bidder Group Member or that Bidder considers, acting reasonably, would be unlawful or damaging to a member of the Bidder Group's commercial or legal interests to disclose.
- (e) Without limiting this clause 3.2, Bidder must:
- (i) agree or accept any conditions imposed by FIRB that are no more onerous than those notified to Target by Bidder in writing before the date of this deed;

- (ii) agree or accept any condition imposed by the OIO that is or is substantially the same as the conditions that are referred to by the OIO on its website as at the date of this deed as the 'Standard Conditions' or are the 'Automatic Conditions' provided for in sections 25A or 25B of the OIO Act; and
- (iii) consider in good faith any other conditions or undertakings imposed, required or requested by the relevant Government Agency, to the extent that:
 - A. acceptance of such conditions or undertakings is reasonably necessary to obtain the relevant Regulatory Approval; and
 - B. such conditions or undertakings:
 - 1) relate solely to the business and operations of the Target Group; and
 - 2) could not reasonably be expected to have a material adverse effect on such business or operations or on the business or operations of any Bidder Group Member.
- (f) For the avoidance of doubt, Target will not be in breach of its obligations to use reasonable endeavours under clause 3.2(a) and 3.2(c) to the extent that it takes an action or omits to take an action:
 - (i) as required or expressly permitted to be done or expressly permitted not to be done, by a Transaction Document;
 - (ii) in connection with an actual, proposed or potential Competing Proposal as permitted by clause 12;
 - (iii) which is Fairly Disclosed in the Disclosure Letter; or
 - (iv) which has been consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed).

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) (*Regulatory Approvals*), 3.1(d) (*Shareholder approval*) and 3.1(f) (*Court approval*) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(g) (*No Prescribed Occurrence*), 3.1(h) (*No Material Adverse Change*) and 3.1(i) (*Target Incentives*) are for the sole benefit of Bidder and may only be waived by Bidder (in its absolute discretion) in writing.
- (c) The Conditions Precedent in clause 3.1(e) (*Independent Expert*) is for the sole benefit of Target and may only be waived by Target (in its absolute discretion) in writing.
- (d) The Conditions Precedent in clauses 3.1(b) (*ASIC and ASX*) and 3.1(c) (*Restraints*) are for the benefit of both Target and Bidder and may only be waived by written agreement between them.
- (e) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
 - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or

- (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Conditions Precedent

- (a) If there is an event or occurrence that would, does or will prevent any of the Conditions Precedent being satisfied (including, for the avoidance of doubt, if Target Shareholders do not approve the Scheme at the Scheme Meeting by the requisite majorities), or if any of the Conditions Precedent become incapable of being satisfied, by the earlier of:

- (i) the time and date specified in this deed for the satisfaction of that Condition Precedent; and
- (ii) the End Date,

or such Condition Precedent is otherwise not satisfied by that specified time and date or by the End Date (as applicable), and the breach or non-fulfilment of the relevant Condition Precedent that has occurred or would otherwise occur has not been or cannot be waived in accordance with clause 3.3, or the Scheme has not otherwise become Effective on the End Date, then Target may give Bidder, or Bidder may give Target, written notice (**Consultation Notice**) requiring Target and Bidder to consult in good faith to:

- (iii) consider and, if agreed, determine, whether the Transaction may proceed by way of alternative means or methods;
- (iv) consider changing and, if agreed, change, the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Bidder and Target (being a date no later than 5 Business Days before the End Date), unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date; or
- (v) consider extending and, if agreed, extend, the time and date specified in this deed for the satisfaction of that Condition Precedent and/or the End Date (as applicable),

respectively.

- (b) Subject to clauses 3.4(c) and 3.4(d), if Target and Bidder are unable to reach agreement under clause 3.4(a) within the earlier of 5 Business Days after the date on which the Consultation Notice is given and 5 Business Days before the time and date specified in this deed for the satisfaction of the Condition Precedent, then, unless:

- (i) the relevant Condition Precedent has been waived in accordance with clause 3.3; or
- (ii) the party, or in the case of clause 3.3(c), each party, entitled to waive the relevant Condition Precedent in accordance with clause 3.3 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition Precedent from being satisfied, or would mean the relevant Condition Precedent would or will not otherwise be satisfied,

either Target or Bidder may terminate this deed without any liability to the other because of that termination (in which case, for the avoidance of doubt, clause 15.3 applies). For the avoidance of doubt, nothing in this clause 3.4(b) affects the

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obligation of Target to pay the Break Fee if it is required to do so under clause 13, or the obligation of Bidder to pay the Reverse Break Fee if it is required to do so under clause 14.

- (c) A party may not terminate this deed pursuant to clause 3.4(b) if:
- (i) the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed; or
 - (ii) the relevant Condition Precedent is stated in clause 3.3 to be for the sole benefit of the other party.
- (d) If the Condition Precedent in clause 3.1(d) (*Target Shareholder Approval*) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then either Target or Bidder may by written notice to the other within 5 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable (including, but not limited to, because the relevant party considers (acting reasonably) that the splitting by one or more Target Shareholders of a holding of Target Shares into two or more parcels of Target Shares (whether or not it results in any change in beneficial ownership of the Target Shares) or some other abusive or improper conduct may have caused or contributed to the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act not having been obtained). If such a notice is given, Target must make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under sub-subparagraph 411(4)(a)(ii)(A) of the Act. If the Court's approval is given, the Condition Precedent in clause 3.1(d) (*Target Shareholder Approval*) is deemed to be satisfied for all purposes.

3.5 Certain notices relating to Conditions Precedent

If a party becomes aware of:

- (a) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
- (b) the happening of an event or occurrence that would, does, will, or would reasonably be likely to:
 - (i) prevent a Condition Precedent being satisfied; or
 - (ii) mean that any Condition Precedent will not otherwise be satisfied,

in the case of 3.5(b)(i) and (ii), before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition Precedent is not otherwise satisfied by that time and date (including, for the avoidance of doubt, if Target Shareholders (other than Excluded Shareholders) do not approve the Scheme at the Scheme Meeting by the requisite majorities),

it must promptly advise the other party by notice in writing (and in any event within 2 Business Days). For the avoidance of doubt, multiple notices may be required under this clause 3.5.

4. Transaction steps

4.1 Scheme

Target must propose the Scheme to Target Shareholders on and subject to the terms of this deed and the Scheme.

4.2 No amendment to the Scheme without consent

Target 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 Bidder.

5. Scheme Consideration

5.1 General

- (a) If the Scheme becomes Effective, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this deed and the Scheme.
- (b) Subject to the terms of the Scheme, Bidder undertakes and warrants to Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration of the transfer to Bidder of each Target Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, Bidder will:
 - (i) accept that transfer;
 - (ii) provide, or procure the provision, to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with:
 - A. subject to clause 5.2 and any application of the Scaleback Mechanism, any Election made by that Scheme Shareholder as contemplated by clause 5.3;
 - B. clauses 5.4 and 5.5; and
 - C. the terms of the Scheme; and
 - (iii) on the Implementation Date:
 - A. pay, or procure the payment of, to a trust account operated by or on behalf of Target, to be held on trust for Scheme Shareholders, an amount in cleared funds equal to the Aggregate Cash Consideration; and
 - B. subject to clause 5.2, procure the allotment of the Aggregate Scrip Consideration to applicable Scheme Shareholders (either directly or indirectly through the Custodian to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), subject to any applicable scaleback in accordance with the Scaleback Mechanism,

in each case in accordance with the terms of this deed and the Scheme.

5.2 Minimum Scrip Threshold not reached

If the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold:

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- (a) Bidder will not:
 - (i) comply with any Elections made on or before the Election Date; or
 - (ii) procure that HoldCo issue any Scrip Consideration to any Scheme Shareholders;
- (b) each Scheme Shareholder who gives an Election on or before the Election Date will be entitled to receive the All Cash Consideration for the Scheme Shares they hold; and
- (c) Bidder must, instead of complying with clauses 5.1(b) and 5.1(b)(iii)B, by no later than 12pm on the Implementation Date, pay or procure the payment of, to a trust account operated by or on behalf of Target, to be held on trust for Scheme Shareholders, an amount in cleared funds equal to the Maximum Cash Consideration and will, by doing so, satisfy its obligations under clauses 5.1(b) and 5.1(b)(iii)B.

5.3 Election mechanism

- (a) Each Target Shareholder (other than Excluded Shareholders and Ineligible Foreign Shareholders) will be entitled to make an Election. All Elections take effect in accordance with the Scheme to the extent any Target Shareholder (other than Excluded Shareholders and Ineligible Foreign Shareholders) who makes an Election qualifies as a Scheme Shareholder.
- (b) Target must ensure that the Scheme Booklet is accompanied by an Election Form.
- (c) The Election Form must state to the effect that:
 - (i) subject to clause 5.3(c)(iv), an Election must be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form on or before the Election Date (provided that Bidder may, with the agreement of Target in writing, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on Bidder, Target and the relevant Target Shareholder, with Bidder having no obligation to communicate with any Target Shareholder prior to making this determination);
 - (ii) an Election will apply to all of the Target Shares of the Target Shareholder (other than an Excluded Shareholder) as at the Election Date;
 - (iii) once made, an Election may be varied, waived or revoked before the Election Date by notice in writing to Target; and
 - (iv) in the manner considered appropriate by Bidder and Target (acting reasonably), a Target Shareholder (other than an Excluded Shareholder) who holds one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Target Shares (subject to providing to Bidder and the Target any substantiating information they reasonably require). If a Target Shareholder (other than an Excluded Shareholder) does so, it will be treated as a separate Target Shareholder for each such parcel in respect of which a separate Election is made (and for any balance of its holding), provided that if, at the Election Date, it holds fewer Target Shares than it held at the time it made the Election,

then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to, any such separate Election (and if so, which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares or otherwise be treated in any other manner that Bidder and Target agree is fair and appropriate.

- (d) Target must ensure that, to the extent reasonably practicable, persons who acquire Target Shares after the date of the dispatch of the Scheme Booklet and up until the Election Date are sent Election Forms upon those persons requesting one from the Target.
- (e) In order to facilitate the issue of the Scrip Consideration (if applicable), Target must provide, or procure the provision, to Bidder:
 - (i) reasonable written updates of the Elections that have been received from Target Shareholders up to the Election Date;
 - (ii) written details of any final Elections made by a Target Shareholder, on the Business Day after the Election Date, including the name and address of each Target Shareholder (other than an Excluded Shareholder) who has made an Election on or before the Election Date and the number of HoldCo Shares that HoldCo must issue to that Target Shareholder to meet its obligations under the Scheme in accordance with that Target Shareholder's Election and subject to the Scaleback Mechanism.
- (f) The parties agree that the terms and conditions that will be stated on the Election Form will include the following:
 - (i) Ineligible Foreign Shareholders may not make an Election and that any purported Election by such persons will be of no effect. Clause 5.7 will apply to any Target Shareholder who makes an Election but who qualifies as an Ineligible Foreign Shareholder;
 - (ii) Excluded Shareholders may not make an Election and that any purported Election by such persons will be of no effect;
 - (iii) if a Target Shareholder does not make a valid Election on or before the Election Date, that Target Shareholder will receive All Cash Consideration in respect of the Scheme Shares held by that Target Shareholder;
 - (iv) Target Shareholders (other than Excluded Shareholders) who make a valid Election on or before the Election Date agree to become members of HoldCo from the Implementation Date and become bound by the HoldCo Constitution and HoldCo SHD from the Implementation Date, pursuant to the Scheme;
 - (v) Target Shareholders (other than Excluded Shareholders) who make an Election on or before the Election Date agree that their Scrip Consideration will be issued to that Scheme Shareholder (either directly or indirectly through the Custodian to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), pursuant to and in accordance with the terms of the HoldCo SHD;
 - (vi) Target Shareholders (other than Excluded Shareholders) who make a valid Election on or before the Election Date must provide, before the Election Date, the information and documents described in the Election Form as being required by Bidder or Target; and

- (vii) if the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold, Target Shareholders (other than Excluded Shareholders) who make valid Elections on or before the Election Date will receive the All Cash Consideration in respect of the Scheme Shares held by that Target Shareholder (other than an Excluded Shareholder),

and such other terms and conditions as Bidder reasonably requires to be stated on the Election Form.

5.4 All Cash Consideration

- (a) If a Target Shareholder:
 - (i) is an Ineligible Foreign Shareholder; or
 - (ii) does not make a valid Election on or before the Election Date,
 that Target Shareholder (other than an Excluded Shareholder) will receive the All Cash Consideration for the Scheme Shares held by them.
- (b) All Target Shareholders (other than Excluded Shareholders) will receive the All Cash Consideration for the Scheme Shares held by them if the provisions of clause 5.2 apply.
- (c) If a calculation of Scheme Consideration would result in a Scheme Shareholder becoming entitled to a fraction of a cent:
 - (i) where the entitlement is to half a cent or more, the fractional entitlement will be rounded up to the nearest whole cent; and
 - (ii) where the entitlement is to less than half a cent, the fractional entitlement will be rounded down to the nearest whole cent.

5.5 Scrip Consideration

If a Target Shareholder (other than an Excluded Shareholder) makes a valid Election on or before the Election Date and clause 5.2 does not apply:

- (a) the Target Shareholder (other than an Excluded Shareholder) will be entitled to receive the Scheme Consideration relevant to their Election (subject to the Scaleback Mechanism and the terms of the Scheme);
- (b) if the number of HoldCo Shares to which that Target Shareholder (other than an Excluded Shareholder) is entitled is not a whole number:
 - (i) where the entitlement is to half a HoldCo Share or more, the number of HoldCo Shares will be rounded up to the nearest whole number; and
 - (ii) where the entitlement is to less than half a HoldCo Share, the number of HoldCo Shares will be rounded down to the nearest whole number; and
- (c) the Scrip Consideration in respect of which the Target Shareholder (other than an Excluded Shareholder) is entitled to will be issued directly to that Scheme Shareholder (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration) or the Custodian to be held as bare trustee for that Scheme Shareholder (at the absolute discretion of Bidder) (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration), pursuant to and in accordance with the terms of the HoldCo SHD.

5.6 Share splitting

If Bidder and Target are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, on or before the Election Date, been party to a shareholding splitting or division or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to the rounding as contemplated by clause 5.5(b)(i), Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and registered address of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

5.7 Ineligible Foreign Shareholders

Bidder has no obligation to provide, and will not provide, under the Scheme any Scrip Consideration to Ineligible Foreign Shareholders, regardless of any Election made by those persons, but must pay the All Cash Consideration to each Ineligible Foreign Shareholder for the Scheme Shares they hold in accordance with the Scheme.

5.8 Scaleback Mechanism

If:

- (a) the:
 - (i) Scheme Shareholder is not an Ineligible Foreign Shareholder and has made a valid Election on or before the Election Date; and
 - (ii) Aggregate Scrip Consideration exceeds the Maximum Scrip Threshold,

then:

- (b) that Scheme Shareholder is entitled to receive:
 - (i) Scrip Consideration as calculated in accordance with the following formula:

$$A = (B \times \text{Scrip Consideration}) \times \left(\frac{C}{D}\right)$$

where:

A = the number of HoldCo Shares to be received by the Scheme Shareholder pursuant to the Scheme;

B = if the Scheme Shareholder:

- (i) has made a Mixed Election Option 1, a number equal to 25% of the Scheme Shares held by the Scheme Shareholder;
- (ii) has made a Mixed Election Option 2, a number equal to 50% of the Scheme Shares held by the Scheme Shareholder;

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(iii) has made a Mixed Election Option 3, a number equal to 75% of the Scheme Shares held by the Scheme Shareholder;

(iv) has made an All Scrip Election Option, a number equal to 100% of the Scheme Shares held by the Scheme Shareholder; or

(v) has made a Custom Consideration Election Option, a number equal to the percentage of that Scheme Shareholder's Scheme Shares in respect of which that Scheme Shareholder will receive Scrip Consideration;

C = the number of HoldCo Shares equal to the Maximum Scrip Threshold; and

D = the Aggregate Scrip Consideration,

plus:

- (ii) the All Cash Consideration for:
 - A. each Scheme Share they hold; less
 - B. the number of Scheme Shares held by the Scheme Shareholder in respect of which the Scheme Shareholder will receive Scrip Consideration as calculated in accordance with clause 5.8(b)(i).

5.9 Special Dividend

- (a) Subject to:
 - (i) the Scheme becoming Effective;
 - (ii) Target having received:
 - A. a draft class ruling from the ATO (or their indicative confirmation); and
 - B. any other administrative guidance from the ATO which Target and Bidder both consider appropriate,

in each case, in a form acceptable to Target (the items referred to at paragraphs 5.9(a)(ii)A and 5.9(a)(ii)B are collectively defined as the **Tax Confirmations**). For the avoidance of doubt, the Tax Confirmations may also be sought in respect of matters pertaining to the Scheme but not specifically referable to the Special Dividend; and

- (iii) Target complying with the requirements of section 254T of the Corporations Act,

and notwithstanding anything else in this deed, Target may (in its absolute discretion) declare and pay a special dividend of up to \$0.60 per Target Share (subject to the availability of franking credits) (**Special Dividend**) to Target Shareholders, provided that:

- (iv) the Special Dividend must be paid in cash;
- (v) the Special Dividend must be 'frankable' within the meaning of section 202-40 of the Tax Act;

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- (vi) the Special Dividend must be fully franked and not be in breach of the 'benchmark rule' (as defined in section 203-25 of the Tax Act);
 - (vii) the franking account of Target is not in deficit at any time after the payment of the Special Dividend for any reason, including due to the payment of the Special Dividend and/or any tax refunds received by Target before or immediately after the declaration of, or the resolution to pay, the Special Dividend;
 - (viii) the record date for the Special Dividend must be at least two days before the Scheme Record Date; and
 - (ix) the payment date for the Special Dividend will be determined by Target (in its absolute discretion), provided that the payment date occurs on or before the Implementation Date.
- (b) The Scheme Consideration will be reduced by the cash amount of the Special Dividend, but for the avoidance of doubt will not be reduced by:
- (i) the value attributed to any franking credits attached to the Special Dividend; or
 - (ii) the amount of any dividend announced, declared or paid by Target prior to the date of this deed.
- (c) If Target announces, declares and pays a Special Dividend in accordance with this clause 5.5, the Special Dividend must be paid from retained earnings of the Target Group immediately prior to the declaration of that dividend.
- (d) In respect of the Tax Confirmations:
- (i) Target must provide a draft of any request for a Tax Confirmation within a reasonable time before submission to the ATO for the purposes of enabling Bidder to comment on any such request;
 - (ii) Target must consider in good faith any reasonable comments from Bidder on any request for a Tax Confirmation which Bidder must provide on a timely basis; and
 - (iii) each party must provide the other party with such assistance and information as may reasonably be requested by the other party for the purposes of obtaining the Tax Confirmations.
- (e) Bidder undertakes (on behalf of itself and the Bidder Group) that no amount of the Special Dividend shall be directly or indirectly funded on or after Implementation from the issue of equity interests (as defined in section 995-1 of the Tax Act) by any company, whether such equity interests are issued before or after the implementation of the Scheme. For the avoidance of doubt, this includes an undertaking that no proceeds from an equity issuance will be applied by the Bidder Group towards the repayment of any portion of any debt facility that has been drawn by Target prior to the Implementation Date to pay part or all of the Special Dividend.
- (f) Target undertakes that no amount of the Special Dividend shall be directly or indirectly funded before implementation of the Scheme from the issue of equity interests (as defined in section 995-1 of the Tax Act) by any Target Group Member, where such equity interests are issued before the implementation of the Scheme.
- (g) Where a change in the Tax Act is announced with effect prior to the Implementation Date which would impact the Target Shareholders' ability to treat the Special

Dividend as a franked dividend, Target and Bidder agree to work together and in good faith to minimise any adverse impact to Target Shareholders to the extent possible.

6. Implementation

6.1 Timetable

- (a) Subject to clause 6.1(b), without limiting the parties' respective obligations under this clause 6, the parties must each use all reasonable endeavours to commit necessary resources (including management and the resources of external advisers) and ensure that their respective officers and advisers work in good faith and in a timely and cooperative fashion with the other party (including by attending meetings and by providing information) to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 6.1(a).
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

6.2 Target's obligations

Target must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including doing each of the following:

- (a) **(Preparation of Scheme Booklet)** subject to clauses 6.3(a) and 6.3(b), prepare the Scheme Booklet as soon as practicable after the date of this deed in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) **(Target Board's recommendation)**
 - (i) following execution of this deed, publicly announce, in the form agreed under clause 8.2 (on the basis of statements made to Target by the Target Board); and
 - (ii) include in the Scheme Booklet, a statement by the Target Board:
 - A. unanimously recommending that Target Shareholders (other than Excluded Shareholders) vote in favour of the Scheme; and
 - B. that each Target Director will vote, or procure the voting of, any Target Shares in which they have a Relevant Interest in favour of the Scheme at the Scheme Meeting,

subject only to:

- C. there being no Superior Proposal; and

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- D. the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders (other than Excluded Shareholders),

unless there has been a withdrawal, change, modification or qualification of the Recommendation permitted by clause 8.1;

- (c) **(Paragraph 411(17)(b) statement)** apply to ASIC for the production of:
- (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (ii) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **(Court direction)** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (e) **(Scheme Meeting)** convene the Scheme Meeting to seek Target Shareholders' (other than Excluded Shareholders) agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act;
- (f) **(Directors' voting)** use reasonable endeavours to procure that each Target Director votes any Target Shares in which they have a Relevant Interest in favour of the Scheme (in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders (other than Excluded Shareholders));
- (g) **(Court documents)** prepare and consult with Bidder in good faith in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on and suggested amendments to those documents from Bidder and its Related Persons;
- (h) **(Court approval)** (subject to all Conditions Precedent in clause 3.1, other than the Condition Precedent 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 as agreed to by the Target Shareholders (other than Excluded Shareholders) at the Scheme Meeting;
- (i) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(f) (*Court approval*)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by Target to Bidder by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (j) **(Lodge copy of Court order)** if the Court approves the Scheme, lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);
- (k) **(Transfer and registration)** if the Scheme becomes Effective and subject to Bidder having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:

- (i) execute, on behalf of Scheme Shareholders, instruments of transfer of Target Shares held by Scheme Shareholders to Bidder; and
 - (ii) register all transfers of Target Shares held by Scheme Shareholders to Bidder on the Implementation Date;
- (l) **(Consultation with Bidder in relation to Scheme Booklet)** consult with Bidder as to the content and presentation of the Scheme Booklet including:
- (i) providing to Bidder successive drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling Bidder to review and comment on those draft documents, provided that, in relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review;
 - (ii) taking all timely and reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
 - (iii) without limiting the above, providing to Bidder a revised draft of the Scheme Booklet within a reasonable time, and in any event no later than 5 Business Days, before the Regulator's Draft is finalised to enable Bidder to review the Regulator's Draft before the date of its submission; and
 - (iv) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet;
- (m) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Target Information;
- (n) **(Lodgement of Regulator's Draft)** no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of subsection 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder as soon as practicable thereafter;
- (o) **(ASIC and ASX review)** keep Bidder informed of any material matters raised by ASIC or ASX in relation to the Transaction Documents or the Transaction, and take into consideration any reasonable comments made by Bidder in relation to such matters raised by ASIC or ASX (provided that, where those matters relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent);
- (p) **(Approval of Scheme Booklet)** procure that a meeting of the Target Board (or a subcommittee thereof) is convened to consider approving the dispatch of the Scheme Booklet to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (q) **(Dispatch)** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, dispatch the Scheme Booklet to Target Shareholders;
- (r) **(Representation):**
- (i) procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act; and
 - (ii) allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at the Court hearings in relation to the Scheme;

- (s) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);
- (t) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (u) **(Listing)** subject to clause 6.2(w), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction, unless Bidder has agreed in writing;
- (v) **(Update Scheme Booklet)** until the Scheme Meeting, promptly update the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement. Target must consult with Bidder as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by this deed;
- (w) **(Quotation of Target Shares and ASX listing)** if the Scheme becomes Effective, apply to ASX to have:
- (i) trading in Target Shares suspended with effect from the close of trading on the Effective Date; and
 - (ii) Target removed from the official list of ASX, and quotation of Target Shares on ASX terminated, by the close of trading on the trading day immediately following the Implementation Date;
- (x) **(Information)** provide all reasonably necessary information, and procure that the Target Registry provides all reasonably necessary information, in each case in a form reasonably requested by Bidder, about the Scheme, Target Shareholders and Scheme Shareholders to Bidder and its Related Bodies Corporate, which Bidder reasonably requires in order to:
- (i) understand the legal and beneficial ownership of the Target Shares, and canvass agreement to the Scheme by Target Shareholders, (including the results of directions by Target to Target Shareholders under Part 6C.2 of the Corporations Act);
 - (ii) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration and to otherwise enable Bidder to comply with the terms of this deed, the Scheme and the Deed Poll; and
 - (iii) review the tally of proxy appointments and directions received by Target before the Scheme Meeting,
- and Target must comply with any reasonable request of Bidder for Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in 6.2(x)(i) or 6.2(x)(ii) above;
- (y) **(Proxy solicitation)** in consultation with Bidder, undertake reasonable shareholder engagement and proxy solicitation actions so as to promote the merits of the Scheme and encourage Target Shareholders (other than Excluded Shareholders) to vote on the Scheme in accordance with the Recommendation, subject to applicable law and ASIC policy;

- (z) **(Target Share Register)**
- (i) close the Target Share Register as at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to Scheme Consideration; and
 - (ii) provide Bidder with a complete copy of the Target Share Register as at the Scheme Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date;
- (aa) **(Instruments of transfer)** subject to Bidder satisfying its obligations under clause 5.1(b), on the Implementation Date:
- (i) execute proper instruments of transfer and effect the transfer of the Target Shares held by Scheme Shareholders to Bidder in accordance with the Scheme; and
 - (ii) register all transfers of the Target Shares held by Scheme Shareholders to Bidder; and
- (bb) **(Class Ruling)** seek a class ruling from the Commissioner of Taxation prior to the Effective Date for the purposes of Division 358 of Schedule 1 to the Taxation Administration Act 1953 (and use reasonable endeavours to procure that the class ruling is finalised and published as soon as reasonably practicable after the Implementation Date) in relation to the income tax consequences arising from the Scheme, including the:
- (i) the treatment of any Special Dividend paid; and
 - (ii) the ability of Target Shareholders (other than Excluded Shareholders) to elect scrip roll-over pursuant to Subdivision 124-M of the Tax Act to the extent of the Scrip Consideration,

whereby Target must provide Bidder's tax advisors with a draft of the application for the class ruling and take all reasonable comments made by Bidder's tax advisors into account in good faith prior to submitting the application to the Commissioner of Taxation. Target must also keep Bidder reasonably updated on the progress of the application and reasonably informed of any material matters raised by the ATO in relation to the application.

6.3 Bidder's obligations

Bidder must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including doing each of the following:

- (a) **(Bidder Information)** prepare and promptly provide to Target the Bidder Information for inclusion in the Scheme Booklet, including all information regarding the Bidder Group and the Scheme Consideration, required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **(Review of Scheme Booklet)** review the drafts of the Scheme Booklet prepared by Target and provide comments on those drafts promptly and in good faith;
- (c) **(Independent Expert's Report)** provide any assistance or information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the

Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);

- (d) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (f) **(Deed Poll)** by no later than the Business Day prior to the First Court Date, execute and deliver to Target the Deed Poll;
- (g) **(Accuracy of Bidder Information)** before the Regulator's Draft is lodged with ASIC and again before the Scheme Booklet is dispatched to Target Shareholders, confirm in writing to Target the accuracy of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;
- (h) **(Share transfer)** if the Scheme becomes Effective:
 - (i) accept a transfer of the Scheme Shares as contemplated by clause 5.1(b)(i); and
 - (ii) execute instruments of transfer in respect of the Scheme Shares;
- (i) **(Scheme Consideration)** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (j) **(Certificate)** before the commencement of the hearing on the Second Court Date provide to Target for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(f)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Bidder to Target by 5.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (k) **(Update Bidder Information)** until the Scheme Meeting, promptly provide to Target any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Bidder Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
- (l) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

6.4 Conduct of Court proceedings

In respect of Court proceedings under Part 5.1 of the Corporations Act:

- (a) Target and Bidder are entitled to separate representation at such Court proceedings;
- (b) this deed does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent; and

- (c) Target and Bidder must give all undertakings to the Court in such Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

6.5 Scheme Booklet content and responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
- (i) Bidder has prepared and is responsible for the Bidder Information contained in the Scheme Booklet;
 - (ii) Target has prepared and is responsible for the Target Information contained in the Scheme Booklet; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Target, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (b) If Target and Bidder disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If after 5 Business Days of consultation, Target and Bidder are unable to agree on the form or content of the Scheme Booklet:
- (i) where the determination relates to Bidder Information, Bidder will make the final determination, acting reasonably, as to the form and content of the Bidder Information; and
 - (ii) in any other case, the final determination as to the form and content of the Scheme Booklet will be made by Target, acting reasonably, provided that, if Bidder disagrees with such final form and content, the Target must include a statement to that effect in the Scheme Booklet.

6.6 Replacement of officeholders

Target must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been dispatched to Scheme Shareholders:

- (a) cause the appointment of the nominees of Bidder as officeholders of Target Group Members (including as directors on the Target Board), subject to those persons being appointed having provided to Target duly executed consents to act as directors, company secretaries or public officers (as applicable) of the relevant Target Group Member; and
- (b) procure that all officeholders of the Target Group Members (including the directors on the Target Board) specified in writing by Bidder (not less than 3 Business Days before the Implementation Date):
 - (i) resign; and
 - (ii) unconditionally and irrevocably release Target from any claims they may have against the Target Group (without prejudice to any rights they may have under any deed of indemnity, access or insurance or policy of directors and officers insurance),

in each case subject to the requirements of the relevant company's constitution, the Corporations Act and the Listing Rules.

6.7 Target Incentives

- (a) By no later than 8.00am on the Scheme Record Date, Target must:
- (i) give effect to the treatment of all Target Incentives in the manner Fairly Disclosed to Bidder in the Disclosure Letter;
 - (ii) use reasonable endeavours to procure that ASX provides all necessary waivers or relief required to give effect to the treatment of all Target Equity Incentives in the manner Fairly Disclosed to Bidder in the Disclosure Letter; and
 - (iii) without limiting clause 6.7(a), ensure there are no Target Equity Incentives (or any other Target securities other than Target Shares) on issue,
- in each case subject to the Scheme becoming Effective.
- (b) For the avoidance of doubt, the parties agree that the exercise of any discretion by the Target Board, or any other action, which is strictly in accordance with this clause 6.7 will not be a Material Adverse Change or a Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed.

6.8 HoldCo documentation

The parties must use their reasonable endeavours to work together in good faith from the date of this deed to finalise and agree the form and terms of the following as soon as possible after the date of this deed by in any event by 8.00am on the First Court Date:

- (a) the HoldCo SHD;
- (b) the HoldCo Constitution; and
- (c) documents ancillary to the HoldCo SHD, or the HoldCo Constitution.

7. Conduct of business

7.1 Conduct of Target's business

- (a) Subject to clause 7.1(b), from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of Target under this deed, Target must:
- (i) procure that each member of the Target Group conducts its business and operations in the ordinary and usual course and substantially consistent with the manner in which such business and operation has been conducted in the 12 months prior to the date of this deed;
 - (ii) procure that each member of the Target Group maintains (and, where necessary, renews) the policies of insurance held by the Target Group to insure any material risk of the Target Group that is in force as at the date of this deed and promptly notify Bidder if any renewal proposal is not accepted by the relevant insurer;
 - (iii) ensure that no Prescribed Occurrence occurs;
 - (iv) ensure that no member of the Target Group:

- A. **(acquisitions and disposals)** acquires, invests, or disposes of any business, assets, property, entity or undertaking (whether by way of a single transaction or series of related transactions), other than acquisitions or disposals in accordance with the terms of a binding agreement entered into by a Target Group Member before the date of this deed and that has been Fairly Disclosed in the Disclosure Materials;
- B. **(joint ventures)** enters into any joint venture, partnership, unincorporated association or similar arrangement;
- C. **(material contracts)**
 - 1) enters into any contract or commitment (or series of related contracts or commitments), or materially varies or terminates any contract or commitment (or series of related contracts or commitments) in existence at the date of this deed (excluding any contract or commitment in respect of Financial Indebtedness and leases and excluding any renewals of contracts or commitments in existence at the date of this deed) requiring annual payments to or from a Target Group Member in excess of \$5 million; or
 - 2) enters into any contract or commitment (or series of related contracts or commitments) that contains a non-compete, restraint of trade, exclusivity provision or similar provision that limits any Target Group Member's ability to compete with a Third Party;
- D. **(disputes)** commences, compromises, settles or offers to settle any legal proceedings, claim, investigation, arbitration or like proceeding (or series of related legal proceedings, claims, investigations, arbitrations or like proceedings), including any legal proceedings, claim, investigation, arbitration or like proceeding in relation to Tax, stamp duty or insurance claims, investigations or disputes, where the claimed or settlement amount (or, in the case of a series of related legal proceedings, claims, investigations, arbitrations or like proceedings, aggregate claimed or settlement amount) is in excess of \$750,000 other than as claimant in respect of the collection of trade debts arising in the ordinary course of the Target Group's business;
- E. **(accounting)** changes any accounting method, practice or principle used by it, other than as a result of changes in or the adoption of generally accepted accounting standards (including in respect of AASB 17) or generally accepted accounting principles or the interpretation of any of them;
- F. **(employees)** enters into any new employment or service agreement (other than for the purposes of replacing an existing agreement or arrangement on a materially consistent basis), or materially varying or terminating any employment or service agreement in existence as at the date of this deed, with an individual in respect of which the total fixed remuneration is greater than \$250,000 per annum, other than for cause in accordance with the terms of the relevant

agreement or in respect of any changes implemented as a result of the Target Group's negotiation of industrial instruments, classification and coverage in respect of its employees;

G. **(remuneration, compensation and benefits):**

- 1) materially increases the remuneration, compensation or benefits of, or pays any bonus to, or otherwise materially varies the employment arrangements with, any of its:
 - a) directors, officers or employees with a total fixed remuneration of greater than \$250,000 per annum (each a **Relevant Employee**); or
 - b) employees (other than Relevant Employees), unless the increase or variation is consistent with past practice;
- 2) accelerates the rights of any Relevant Employee or any employee to benefits of any kind; or
- 3) pays or agrees to pay a Relevant Employee or any employee a termination or redundancy payment (including a 'golden parachute') or retention payment,

other than as:

- 4) Fairly Disclosed in the Disclosure Letter; and
- 5) provided for in Target's redundancy policy as at the date of this deed or an employment or services agreement in existence as at the date of this deed, in each case as Fairly Disclosed in the Disclosure Materials;

H. **(Tax elections)** makes any material Tax elections or changes any material Tax methodologies applied by it in the 12 months prior to the date of this deed;

I. **(related party transactions)** enters into, or resolves to enter into, a transaction with a related party of Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a Target Group Member) as defined in section 228 of the Corporations Act;

J. **(Third Party defaults)** waives any Third Party default where the financial impact of the waiver on the Target Group as a whole will, or is reasonably likely to be, in excess of \$250,000 (individually or in aggregate);

K. **(financing)**

- 1) enters into any new debt facilities, or varies or terminates any Existing Financing of an amount in excess of \$3 million (individually or in aggregate), other than in respect of any payment required by

law (for the avoidance of doubt, excluding drawdowns and repayments under any Existing Financing); or

2) enters into any swap, derivative or hedging agreement or arrangement;

L. **(Capex)** agrees to incur or incurs capital expenditure (including SaaS arrangements) of more than \$5 million (individually) and \$25 million (in aggregate);

M. **(dividends)** agrees to pay, declares or pays a dividend or any other form of distribution of profits or return of capital to its members, other than:

1) to another Target Group Member; and

2) the declaration and payment of the Special Dividend;

N. **(guarantees and indemnities)** guarantees or indemnifies the obligations of any other person, other than a member of the Target Group;

O. **(carrying on of business)** ceases, or threaten to cease, to carry on a substantial part of its business;

P. **(licenses and authorisations)** does or omit to do anything which might result in the variation, termination, suspension, revocation or non-renewal or authorisation held by the Target Group which is material to the operation of the Target Group's business;

Q. **(Target Group IP)** sells, assigns, transfers or grants any license or other right or interest in, abandons, amends, rebrands or otherwise modifies any Target Group IP which is material to the Target Group's business, other than to another Target Group Member;

R. **(leases)** enters into or terminates a lease the value of which exceeds \$5 million (for the avoidance of doubt, excluding any renewals of leases in existence at the date of this deed);

S. **(acquisition of interest in New Zealand land)** acquires, by any means, whether indirectly or indirectly, any 'estate or interest in land' that constitutes 'sensitive land' for the purposes of, and as those terms are defined in, the OIO Act and the *Overseas Investment Regulations 2005*;

T. **(FUM strategy)** to the extent within the control of a Target Group Member, materially changes its FUM investment strategy, or makes or authorises the making of investments outside of the ordinary and usual course or the manner in which FUM investments have been made in the 12 months prior to the date of this deed; or

U. **(authorisation)** authorises, agrees, commits or resolves to do any of the matters set out above, whether conditionally or otherwise.

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- (b) Nothing in clause 7.1(a) restricts the ability of Target (or any Target Group Member) to take or not take any action:
 - (i) which is required or expressly permitted by a Transaction Document, including for the avoidance of doubt actions to give effect to a Competing Proposal which is, or would be reasonably likely to be, a Superior Proposal;
 - (ii) which has been agreed to by Bidder in writing or requested by Bidder in writing;
 - (iii) which is required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles, contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed to Bidder, before the date of this deed or otherwise in accordance with this deed) or by a Government Agency;
 - (iv) to reasonably and prudently respond to regulatory or legislative changes (including without limitation changes to subordinate legislation) affecting the business of Target or a Target Group Member to a material extent, provided that, to the extent reasonably practicable, Target has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
 - (v) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property), or a disease epidemic or pandemic (other than the Coronavirus) provided that the response does not have a material adverse impact on the expected future prospects or the operations of the Target Group and it is impractical to seek the approval of Bidder prior to giving effect to the response; or
 - (vi) which is Fairly Disclosed in:
 - A. the Disclosure Materials, other than in respect of clause 7.1(a)(iv)L;
 - B. an announcement made by Target or a Target Group Member to the ASX in the two years prior to the date of this deed; or
 - C. a publicly available document lodged with ASIC by or on behalf of Target or another Target Group Member (which would be disclosed in a search of ASIC's records that are open to public inspection) in the two years prior to the date of this deed.
- (c) Notwithstanding any other provision in this deed, Target covenants and undertakes in favour of Bidder that it will not, and will procure that each other member of the Target Group does not, pay or authorise the payment of any amount in respect of any Target Cash Incentives prior to the earlier of the termination of this deed and the Implementation Date. For the avoidance of doubt, the exceptions in clause 7.1(b) do not apply to this clause 7.1(c).

7.2 Access to information and management

Between the date of this deed and the Implementation Date, Target must provide to Bidder reasonable access to information (including books and records), premises and such senior

employees of any Target Group Member as reasonably requested by Bidder upon reasonable notice, and afford Bidder reasonable co-operation, for the sole purpose of:

- (a) implementation of the Scheme;
- (b) Bidder developing and implementing plans for transition of the businesses of the Target Group to Bidder following implementation of the Scheme; and
- (c) any other purpose agreed in writing between the parties (each acting reasonably),

provided that:

- (d) nothing in this clause 7.2 will require Target to provide, or procure the provision of, information concerning or in connection with:
 - (i) any Target Director's, the Target Board's (or any sub-committee of the Target Board's) and management's (a **Relevant Person**) consideration of the Scheme or any proposal by Bidder at any time in relation to the acquisition of an interest in Target; or
 - (ii) any actual, proposed or potential Competing Proposal (including a Relevant Person's consideration of any actual, proposed or potential Competing Proposal);
- (e) the provision of information pursuant to this clause 7.2 must not result in unreasonable disruptions to the Target Group's business and its day to day operations, it being noted that the business of the Target Group will need to continue to operate with requisite management attention;
- (f) Bidder must, and must procure that its representatives, each other Bidder Group Member and their representatives:
 - (i) keep all information obtained by it or them as a result of this clause 7.2 confidential in accordance with the terms of the Confidentiality and Process Agreement;
 - (ii) provide Target with reasonable notice of any request for information or access; and
 - (iii) comply with the reasonable requirements of Target in relation to any access granted; and
- (g) nothing in this clause 7.2:
 - (i) gives Bidder or any other Bidder Group Member any rights to undertake further due diligence investigations, or any rights as to the decision making of any Target Group Member or its business;
 - (ii) will require Target to provide, or procure the provision of, information concerning the Target Group's business that is, in the reasonable opinion of Target, any commercially sensitive, including any specific pricing and margin information or customer details; or
 - (iii) will require Target to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
 - A. breach any applicable law, regulatory requirement, authorisation or court order; or
 - B. result in a waiver or loss of legal professional privilege.

7.3 Obligation to update

Target must, promptly after becoming aware of a matter or development that is material to the Transaction or the Target Group's business, provide Bidder with sufficient information such that

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Bidder can assess the nature and potential impact of that matter or development on the Transaction or the Target Group's business.

7.4 Implementation Committee

- (a) On and from the date of this deed, the parties agree to establish a committee (**Implementation Committee**) initially comprising 3 representatives of Target and Bidder as named in the Disclosure Letter.
- (b) The role of the Implementation Committee will be to act as a forum for discussion and planning in respect of the following:
 - (i) the performance of the business of Target;
 - (ii) implementation of the Scheme;
 - (iii) employee retention and incentivisation and stakeholder engagement and communications; and
 - (iv) the process referred to in clause 7.5.
- (c) Each party must ensure that its representatives on the Implementation Committee act in good faith in their capacity as members of the Implementation Committee with a view to fulfilling the role and objectives of the Implementation Committee (to the extent they can reasonably do so).
- (d) The Implementation Committee will meet at such times and places as agreed between the members of the Implementation Committee from time to time (and at a minimum at least fortnightly). Meetings may be held via telephone, video or any other technology that permits each member to communicate with every other member (or any combination of these technologies).
- (e) The members of the Implementation Committee may agree to invite other persons to attend meetings of the Implementation Committee from time to time.
- (f) From time to time, certain members of the Implementation Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Implementation Committee to discuss and progress matters considered or plans developed by the Implementation Committee.
- (g) All information obtained by a party or its Related Persons through the Implementation Committee must be kept confidential in accordance with the terms of the Confidentiality and Process Agreement.
- (h) The parties acknowledge and agree that:
 - (i) the Implementation Committee is a discussion and planning forum only, and the members of the Implementation Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party; and
 - (ii) nothing in this clause 7.4:
 - A. gives Bidder any rights as to the decision making of any Target Group Member or its business, or gives Bidder any rights to undertake further due diligence investigations;
 - B. in any way, or to any extent, limits Target's conduct of the business of the Target Group;

- C. requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties; or
- D. requires a party to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law.

7.5 Change of control provisions

As soon as practicable after the date of this deed, Target and Bidder must seek to identify any change of control or unilateral termination rights or similar provisions in any material leases or material contracts to which Target or another Target Group Member is party that would be triggered by the implementation of the Transaction (**Change of Control Requirements**). In respect of those contracts, the parties agree as follows:

- (a) Target and Bidder will, each acting reasonably, agree a proposed course of action to obtain any consents or waivers required in accordance with the terms of any identified Change of Control Requirements and then Target will, in the manner and on the terms agreed with Bidder in writing, initiate contact with the relevant counterparties and request that they provide any consents or waivers required. Bidder and its Related Persons must not contact any counterparties for this purpose without Target being present or without Target's prior written consent (which is not to be unreasonably withheld or delayed).
- (b) Bidder must cooperate with, and provide reasonable assistance to, Target to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties, provided that nothing in this clause requires Bidder to:
 - (i) incur external expense or make any payment; or
 - (ii) agree to any new conditions to any new guarantees or security to a contract or lease counterparty which are not acceptable to Bidder.
- (iii) Provided that Target has complied with this clause 7.5, a failure by a Target Group Member to obtain any third party consent or waiver in respect of a Change of Control Requirement will not, by itself, constitute a breach of this deed by Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

7.6 Existing Financing arrangements

- (a) Between the date of this deed and the Implementation Date, Target must provide reasonable assistance requested by Bidder in connection with any repayment of any Existing Financing, or otherwise developing a financing strategy for the Target Group's business, that Bidder reasonably requires in connection with the Transaction, including:
 - (i) liaising with its creditors to obtain information on any of the Existing Financing or Security Interests granted by any of them;
 - (ii) providing Bidder with information reasonably requested by Bidder in relation to use of existing cash reserves of the Target Group for such purpose;
 - (iii) issuing repayment notices in relation to the existing Target Group debt facilities; and
 - (iv) using reasonable endeavours to procure discharge of registrations on the PPS Register from secured parties in relation to any Security Interests granted by a Target Group Member in favour of that party.

- (b) Without limiting clause 7.6(a), Target must provide reasonable assistance requested by Bidder in connection with the orderly transition of any existing bank guarantee, letter of credit, performance bond or similar instrument issued to any person at the request or direction of any member of the Target Group (**Instrument**), including:
- (i) providing details of existing Instruments to Bidder; and
 - (ii) communicating with and providing information to the issuers of the Instruments to facilitate the replacement, cash backing or other arrangement for the transition of those Instruments in connection with the Transaction.
- (c) Bidder must promptly reimburse Target for all reasonable and documented costs incurred by Target in connection with any cooperation provided under this clause 7.6 (including reasonable advisers' fees and expenses).
- (d) Between the date of this deed and the Implementation Date, Target must, and must do all things reasonably within its power to procure that each member of the Target Group does, promptly notify Bidder if:
- (i) it requests or grants a waiver or consent in respect of a material provision of Existing Financing, with reasonable detail of the reason for the request;
 - (ii) it becomes aware of a breach of Existing Financing or the occurrence of a financing default, together with reasonable information in relation to the financing default, event or circumstance giving rise to the breach or financing default; or
 - (iii) any Target Group Member enters into, unwinds or closes out any Financial Indebtedness in connection with derivative or similar transactions, including to manage exposure to the fluctuation in the rate or price of currency or interest rates.
- (e) Target must consult in good faith with Bidder after the date on which a notice is given under clause 7.6(d) to consider and determine the steps that can be taken to avoid, remedy or cure (as the case may be) the relevant financing default, and use its best endeavours to avoid the occurrence of, or remedy or cure, any financing default.
- (f) Target must notify Bidder, no later than 10 Business Days prior to the Implementation Date, of the aggregate amount of cash and cash equivalents (where the terms "cash" and "cash equivalents" are as defined in the Accounting Standards, excluding any trapped, restricted, ring-fenced or otherwise inaccessible cash), and the Financial Indebtedness, of the Target Group. As soon as possible thereafter, Target must if directed to do so in writing by Bidder and subject to the Scheme becoming Effective, implement steps (as directed by Bidder) on and from the Effective Date for the Target Group to apply as much of its cash and cash equivalents as possible (except to the extent required for reasonable working capital requirements, as specified by Bidder) to repay, terminate extinguish, release or otherwise reduce the level of Financial Indebtedness of the Target Group (and Target shall use all reasonable endeavours to procure the release of any related Security Interest by the relevant counterparty on the date of such repayment or termination).

7.7 Transaction Financing

- (a) Subject to confidentiality arrangements acceptable to Target (acting reasonably), Target agrees to provide reasonable assistance in connection with the arrangement

or syndication of the Debt Financing by any member of the Bidder Group (**Transaction Financing**) as may be reasonably requested by Bidder in writing, including using reasonable endeavours to:

- (i) promptly provide any reasonable, pertinent or customary information to the extent reasonably available to the Target Group and reasonably requested by Bidder;
- (ii) provide any documentation and other information with respect to the Target Group required by financiers or bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, as required to satisfy the conditions of the Debt Financing;
- (iii) make appropriate officers and employees available at mutually convenient times for participation in a reasonable number of meetings, due diligence sessions, presentations and sessions with ratings agencies and prospective financing sources;
- (iv) promptly provide Bidder and its financing sources with such financial and operating data and other information with respect to the Target Group as is reasonably requested by Bidder and/or the financiers in respect of the Debt Financing;
- (v) cooperate with marketing efforts of Bidder and its financing sources for all or any portion of the Debt Financing (including by making available such senior executives of Target as reasonably requested by Bidder for conference calls, management presentation sessions and similar meetings or presentations); and
- (vi) providing reasonable assistance to Bidder Group to satisfy any of its obligations or any conditions of any financing to the extent it is within its reasonable control,

provided that no Target Group Member will be required to incur any liability in connection with any Transaction Financing (other than remuneration of its employees) prior to implementation of the Scheme that is not indemnified by Bidder.

- (b) Nothing in this clause 7.7 will require Target to do anything to the extent that it would:
 - (i) unreasonably interfere with the ongoing business or operations of Target (having regard to, among other things, the reasonableness of the notice given to Target of any requested assistance or cooperation);
 - (ii) cause any Condition Precedent to not be satisfied or otherwise cause a breach of this deed;
 - (iii) require the approval of shareholders of Target under section 260B of the Corporations Act or an equivalent or analogous restriction in any jurisdiction; or
 - (iv) require any Target Indemnified Party to execute prior to the Scheme becoming Effective any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with any Debt Financing or Equity Financing.
- (c) Bidder must indemnify Target (in its own right and separately as trustee or nominee for each Target Indemnified Party) and each of the Target Indemnified Parties

against any claim, action, damage, loss, liability, cost, expense or payment, of whatever nature and however arising, suffered or incurred by any of them in connection with any Debt Financing and any information utilised in connection with any Debt Financing, in each case other than to the extent any of the foregoing arises from the fraud or wilful misconduct of Target or a Target Indemnified Party.

- (d) Bidder must promptly reimburse Target for all reasonable and documented costs incurred by Target in connection with any cooperation provided under this clause 7.7 or otherwise in connection with the Debt Commitment Letter (including reasonable advisers' fees and expenses).
- (e) Target must use all reasonable endeavours to facilitate liaison between Bidder and existing financiers, noteholders, transactional banking and derivative instrument counterparties of the Target Group for the purposes of Bidder notifying and discussing change of control procedures and post-acquisition financing related matters with those financiers and/or managing the repayment and in the case of transactional banking and ordinary course derivative transactions, at the request of Bidder, continuation of those counterparties on or after the Implementation Date and the efficient termination (or continuation as the case may be) of their Existing Financing arrangements with Target Group Members with effect from that time (including as to the release of any existing Security Interests held by those counterparties over Target Group Members).

8. Recommendation and announcements

8.1 Target Board recommendation

- (a) Target represents and warrants to Bidder that, as at the date this deed, each Target Director has confirmed that:
 - (i) their recommendation in respect of the Scheme is that the Target Shareholders (other than Excluded Shareholders) vote in favour of the Scheme; and
 - (ii) they intend to vote, or cause to be voted, all Target Shares in which they have a Relevant Interest in favour of the Scheme,

in each case subject only to:

 - (iii) no Superior Proposal emerging; and
 - (iv) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of the Target Shareholders (other than Excluded Shareholders).
- (b) Target must procure that, subject to clause 8.1(c), the:
 - (i) Target Directors unanimously recommend that Target Shareholders (other than Excluded Shareholders) vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) concluding in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders (other than Excluded Shareholders) (the **Recommendation**); and
 - (ii) Scheme Booklet includes the Recommendation and a statement by each Target Director that they intend to vote, or cause to be voted, all Target Shares in which they have a Relevant Interest in favour of the Scheme.

- (c) Target must procure that the Target Board collectively, and the Target Directors individually, do not adversely change, withdraw, adversely modify or adversely qualify (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that she or he no longer supports the Scheme), its or their Recommendation unless:
- (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, that report) that the Scheme is not in the best interests of Target Shareholders (other than Excluded Shareholders);
 - (ii) Target has received a Competing Proposal and the Target Board has determined, after the procedure in clause 12.6 has been complied with, that the Competing Proposal constitutes a Superior Proposal; or
 - (iii) the Target Director is required to do so by or in order to comply with an order or other requirement of a court of competent jurisdiction, ASIC or the Takeovers Panel.
- (d) For the purposes of clause 8.1(c), customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation to the effect that the Recommendation is made:
- (i) in the absence of a Superior Proposal;
 - (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders (other than Excluded Shareholders)'; and
 - (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders (other than Excluded Shareholders)',
- will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation.
- (e) Despite anything to the contrary in this clause 8.1 or elsewhere in this deed, a statement made by Target, the Target Board or any Target Director:
- (i) to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 12.6; or
 - (ii) recommending that Target Shareholders vote in favour of the Scheme at the Scheme Meeting on the basis of the All Cash Consideration only and making no recommendation in relation to the Scrip Consideration,
- shall not contravene this clause 8.1 or any other provision of this deed.
- (f) Without limiting clause 12, if a Target Director proposes to adversely change, withdraw, adversely modify or adversely qualify his or her Recommendation pursuant to clauses 8.1(c)(iii):
- (i) Target must notify Bidder in writing; and

- (ii) the parties must consult in good faith for 5 Business Days after the date on which the notification in clause 8.1(f)(i) is given to consider and determine whether the Recommendation in place at the time can be maintained. Target must procure that the Recommendation is not adversely changed, withdrawn, adversely modified or adversely qualified until the end of the consultation period.

8.2 Announcement of the Transaction

Immediately after the execution of this deed, Target must issue a public announcement in a form agreed in writing between Target and Bidder. Such announcement must include a unanimous Recommendation by the Target Board.

8.3 Public announcements

- (a) Subject to clauses 8.3(b) and 8.4, no material public announcement or public disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme (**Proposed Public Announcement**) may be made by a Target Group Member or a Bidder Group Member other than in a form approved by each party in writing (such approval not to be unreasonably withheld or delayed). A party must provide the other party with a draft copy of any Proposed Public Announcement as soon as reasonably practicable before it is proposed that such Proposed Public Announcement is made, and must give the other party a reasonable opportunity to comment on the form and content of the draft Proposed Public Announcement and must take into account all reasonable comments from that party on the draft. For the avoidance of doubt, this clause 8.3 does not apply to any announcement or disclosure in connection with an actual, proposed or potential Competing Proposal.
- (b) Subject to the terms of the Confidentiality and Process Agreement, nothing herein prohibits or prevents a member of the Bidder Group from disclosing any information of a nature that would typically be provided by private equity funds to their investors or prospective investors so long as such recipients are bound by an obligation to keep such information confidential.

8.4 Required disclosure

- (a) Despite any provision of the Confidentiality and Process Agreement, where a party is required by applicable law or the 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 despite clause 8.3.
- (b) Despite any provision of the Confidentiality and Process Agreement, before any disclosure is made in reliance on clause 8.4(a), to the extent reasonably practicable and permitted by the relevant law:
 - (i) the party required to make the disclosure (**Disclosing Party**) must use best endeavours to notify the other party as soon as reasonably practicable after it becomes aware that disclosure is required; and
 - (ii) the Disclosing Party must use best endeavours to give the other party an opportunity to comment on the proposed form of the disclosure and amend any factual inaccuracy, and consider in good faith any other comments of the other party on the form of the disclosure,

other than where such disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.

9. Representations, warranties and indemnities

9.1 Target’s representations and warranties

Subject to clause 9.5, Target represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) that each of the Target Representations and Warranties is true and correct.

9.2 Target’s indemnity

Subject to clause 9.5, Target agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each of the Bidder Indemnified Parties from, and must pay on demand the amount of any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Representations and Warranties.

9.3 Bidder’s representations and warranties

Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that each of the Bidder Representations and Warranties is true and correct.

9.4 Bidder’s indemnity

Bidder agrees with Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify Target and each of the Target Indemnified Parties from, and must pay on demand the amount of any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Target or any of the other Target Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Representations and Warranties.

9.5 Qualifications on Target’s representations, warranties and indemnities

The Target Representations and Warranties made or given in clause 9.1 and the indemnity in clause 9.2, are each subject to matters that:

- (a) have been Fairly Disclosed in:
 - (i) the Disclosure Materials;
 - (ii) an announcement made by Target to the ASX prior to the date of this deed;
 - (iii) a publicly available document lodged by Target or a Target Group Member with ASIC (which would be disclosed in a search of ASIC’s records that are open to public inspection) prior to the date of this deed; or
 - (iv) a publicly available document which would be disclosed in a search of the PPS Register (or equivalent records or registers in another jurisdiction) or the public records maintained by the Relevant Courts (as defined in the Disclosure Letter), in relation to a Target Group Member as at the applicable dates set out in the Disclosure Letter;
- (b) are required or expressly permitted by a Transaction Document;
- (c) are required by any applicable law, regulation, or by a Government Agency; or

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(d) are within the actual knowledge of Bidder on or before the date of this deed.

9.6 Survival of representations and warranties

Each representation and warranty made or given in clauses 9.1 and 9.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

9.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.4):

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

9.8 Timing of representations and warranties

Each representation and warranty made or given under clauses 9.1 or 9.3 is given at the date of this deed and repeated continuously thereafter until 8.00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

9.9 Notification obligations

- (a) Target must notify Bidder in writing as soon reasonably practicable after Target becomes aware of any fact, matter or circumstance that has resulted in, or might reasonably be expected to result in, a breach of a Target Representation and Warranty. A notice provided by Target to Bidder under this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of a Target Representation and Warranty.
- (b) Bidder must notify Target in writing as soon reasonably practicable after Bidder becomes aware of any fact, matter or circumstance that has resulted in, or might reasonably be expected to result in, a breach of a Bidder Representation and Warranty. A notice provided by Bidder to Target under this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of a Bidder Representation and Warranty.

9.10 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 those expressly set out in the Disclosure Letter 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

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parties' entry into it and the transactions contemplated by it, are expressly excluded.

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

10. Releases of directors and officers

10.1 Target and Target Directors and officers

- (a) Bidder releases its rights, and agrees with Target that it will not make any claim (including any Claim) against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (i) Target's execution or delivery of this deed;
 - (ii) any breach of any representations, covenants, warranties and obligations of Target or any other Target Group Member in this deed;
 - (iii) the implementation of the Scheme;
 - (iv) any disclosures containing any statement which is false or misleading whether in content or by omission in connection with the Scheme; or
 - (v) any failure to provide information in connection with the Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 10.1(a) limits Bidder's rights to terminate this deed under clause 15.2(a).
- (b) This clause 10.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Target receives and holds the benefit of this clause 10.1 to the extent it relates to each Target Indemnified Party as trustee or nominee for each of them.

10.2 Bidder and Bidder directors and officers

- (a) Target releases its rights, and agrees with Bidder that it will not make a claim (including any Claim), against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (i) Bidder's execution or delivery of this deed;
 - (ii) any breach of any representations, covenants, warranties and obligations of Bidder or any other Bidder Group Member in this deed;
 - (iii) the implementation of the Scheme;
 - (iv) any disclosure containing any statement which is false or misleading whether in content or by omission in connection with the Scheme; or
 - (v) any failure to provide information in connection with the Scheme,

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whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 10.2(a) limits Target's rights to terminate this deed under clause 15.2(b).

- (b) This clause 10.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Bidder receives and holds the benefit of this clause 10.2 to the extent it relates to each Bidder Indemnified Party as trustee or nominee for each of them.

10.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and being implemented, Bidder undertakes in favour of Target and each other Target Indemnified Party that it will:
 - (i) for a period of seven years from the Implementation Date, ensure that the constitutions of Target and each other Target Group Member 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 directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and
 - (ii) procure that Target and each other Target Group Member 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 placed pursuant to clause 10.3(b) below is maintained for a period of seven years from the retirement date of each applicable director and officer and not take any action which would prejudice or adversely affect any directors' and officers' run-off insurance cover taken out in accordance with clause 10.3(b).
- (b) Bidder acknowledges that, notwithstanding any other provision of this deed, Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such seven year period referred to in 10.3(a)(ii) (**D&O Run-off Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not, by themselves, be a Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed, provided that:
 - (i) Target must use reasonable endeavours to obtain the most attractive commercial terms for the D&O Run-off Policy from a reputable insurer;
 - (ii) Target keeps Bidder informed of progress in relation to the D&O Run-off Policy;
 - (iii) the scope and amount of the cover of the D&O Run-off Policy is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in place for the directors and officers of Target as at the date of this deed (it being acknowledged that the market for cover is dynamic and reasonable regard is to be had to the extent to which the level and type of cover in place under the existing policies is available for the extended run-off); and
 - (iv) without limiting clause 10.3(b)(i), Target must obtain and provide to Bidder a quote from reputable insurers for a D&O Run-off Policy sourced

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in accordance with (and which would comply with) clauses 10.3(b)(i) to 10.3(b)(iii) no later than 30 Business Days following the date of this deed and, if requested in writing by Bidder (and provided there is a reasonable period to obtain an alternative quote and enter into the D&O Run-off Policy before the date of the Scheme Meeting), Target will, before entering into the Proposed D&O Run-off Policy (as defined below) obtain a quote from reputable insurers nominated in writing by Bidder (**Alternative Insurers**) for a D&O Run-off Policy sourced in accordance with (and which would comply with) clauses 10.3(b)(i) to 10.3(b)(iii) (**Alternative D&O Policy**), which is on the same terms, or terms that are the same in all material respects, as the D&O Run-off Policy which is proposed to be entered into by Target (**Proposed D&O Run-off Policy**) (which was sourced in accordance with (and which would comply with) clauses 10.3(b)(i) to 10.3(b)(iii)) and if:

- A. the estimated total costs under the Alternative D&O Run-off Policy are equal to or greater than the estimated total costs under the Proposed D&O Run-off Policy;
- B. the Alternative Insurers decline to participate or provide a quote; or
- C. the Alternative Insurers fail to provide a quote within a period of time that would allow the policy to be entered into before the date of the Scheme Meeting,

then Target will proceed to enter into the Proposed D&O Run-off Policy. However, if the estimated total costs under the Alternative D&O Run-off Policy are less than the estimated total costs under the Proposed D&O Run-off Policy and there is a reasonable period for Target to enter into the Alternative D&O Run-off Policy before the date of the Scheme Meeting, Target Board must consider (acting reasonably, in good faith and considering the terms of cover that would be provided by the Alternative Insurers) the Alternative D&O Run-off Policy, unless Bidder agrees otherwise in writing.

- (c) The undertakings contained in clause 10.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 10.3(a), to the extent it relates to the other Target Indemnified Parties, as trustee or nominee for them.

11. Confidentiality

11.1 Confidentiality and Process Agreement

Target and Bidder acknowledge and agree that they continue to be bound by the Confidentiality and Process Agreement after the date of this deed. To the extent of any inconsistency between the Confidentiality and Process Agreement and this deed, the terms of this deed shall prevail.

11.2 Survival of obligations

The rights and obligations of Target and Bidder under the Confidentiality and Process Agreement survive termination of this deed (for so long as the Confidentiality and Process Agreement binds that party in accordance with its terms).

11.3 Disclosure on termination of deed

The parties agree that, if this deed is terminated under clause 15, any party may disclose:

- (a) the fact that this deed has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this deed has been terminated to ASIC.

12. Exclusivity

12.1 No shop

During the Exclusivity Period, Target must ensure that neither it nor any of its Related Persons directly or indirectly:

- (a) solicit, invite, encourage or initiate (including by the provision of Non-public Information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which could reasonably be expected to encourage or lead to the making of, or with a view to obtaining, a Competing Proposal; or
- (b) communicate to any Third Party an intention to do anything referred to in clause 12.1(a).

12.2 No talk

Subject to clause 12.4, during the Exclusivity Period, Target must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) facilitate, participate in or continue any negotiations or discussions with any person with respect to any inquiry, expression of interest, offer, proposal, discussion, negotiation or other communication by any person in relation to, or which could reasonably be expected to encourage or lead to the making of, any Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding any Competing Proposal; or
- (c) communicate to any person an intention to do anything referred to in clause 12.2(a) or 12.2(b).

12.3 No due diligence

Subject to clause 12.4, during the Exclusivity Period, Target must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) disclose or otherwise provide or make available any Non-public Information to a Third Party in connection with, with a view to obtaining or which could reasonably be expected to encourage or lead to the formulation, development, finalisation, receipt or announcement of any Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group), whether by that Third Party or another person; or
- (b) communicate to any person an intention to do anything referred to in clause 12.3(a),

provided that nothing in this clause 12.3 prevents or restricts Target or any of its Related Persons from responding to a Third Party in respect of an enquiry, expression of interest, offer or proposal by that Third Party to make, or which may reasonably be expected to encourage or lead to the making of, any actual, proposed or potential Competing Proposal to merely (A)

acknowledge receipt and/or (B) advise that Third Party that Target is bound by the provisions of this clause 12.3 and is only able to engage in negotiations, discussions or other communications if the fiduciary out in clause 12.4 applies.

12.4 Fiduciary exception

The restrictions in clauses 12.2 and 12.3 do not apply to the extent that they restrict Target or any of its Related Persons from taking or omitting to take any action with respect to a bona fide, actual Competing Proposal which was not solicited, invited, encouraged or initiated in contravention of clause 12.1, provided that the Target Board has determined:

- (a) after consultation with its financial advisers, that the Competing Proposal would reasonably be expected to lead to a Superior Proposal; and
- (b) after receiving advice from its financial and legal advisers, that compliance with clauses 12.2 and 12.3 (as applicable) would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of any member of the Target Board.

12.5 Notification of approaches

- (a) During the Exclusivity Period, Target must as soon as reasonably practicable (and in any event within 24 hours) notify Bidder in writing if it, or any of its Related Persons, becomes aware of:
 - (i) any negotiations, discussions or other communications, or any other contact, with Target or any of its Related Persons that relates to an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal;
 - (ii) any approach or proposal made to, or received by, Target or any of its Related Persons in connection with an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal;
 - (iii) any request made by a Third Party to Target or any of its Related Persons for any Non-public Information (other than where the Target Board reasonably believes that such request is in the ordinary course of business and is not in connection with such Third Party formulating, developing or finalising a Competing Proposal); or
 - (i) provision by Target or any of its Related Persons of any Non-public Information to any Third Party in connection with an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notification given under clause 12.5(a) must include all material details of the Competing Proposal (including the price and form of consideration, proposed timing, any conditions precedent and the identity of any Third Party that made, and/or any Third Party involved in, the Competing Proposal) to the extent known by Target and its Related Persons.
- (c) For the avoidance of doubt, nothing in this clause 12.5 obliges Target to notify Bidder of a Competing Proposal until after the Target Board has determined in accordance with clause 12.4 whether clauses 12.2 and 12.3 apply with respect to that Competing Proposal.

12.6 Matching right

- (a) Without limiting clause 12.1, during the Exclusivity Period, Target:
- (i) must not enter into a legally binding agreement, arrangement or understanding (whether or not in writing) to give effect to any actual, proposed or potential Competing Proposal (and, for the avoidance of doubt, this does not include Target entering into a confidentiality agreement or like agreement in relation to any engagement or action permitted by clause 12.4); or
 - (ii) must procure that no Target Director withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation to publicly recommend any actual, proposed or potential Competing Proposal or otherwise publicly supports any actual, proposed or potential Competing Proposal;
- unless:
- (iii) the Target Board determines, acting in good faith and in order to satisfy what the Target Directors consider to be their statutory or fiduciary duties after consultation with its external financial advisers and having received written advice from its external legal advisers, that the Competing Proposal is, or would be reasonably likely to be, a Superior Proposal;
 - (iv) Target has provided Bidder with a notice stating that it is given for the purposes of this clause 12.6 and setting out all material terms and conditions of the Competing Proposal known by Target and its advisers, including price, conditions precedent, proposed deal protection arrangements, any break or reimbursement fee and the identity of the Third Party making the actual, proposed or potential Competing Proposal (in each case, to the extent known);
 - (v) Target has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 12.6(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counterproposal**); and
 - (vi) Bidder has not announced or otherwise formally proposed to Target a Bidder Counterproposal by the expiry of the 5 Business Day period in clause 12.6(a)(v) that the Target Board acting in good faith determines would produce an equivalent or superior outcome for Target Shareholders (other than Excluded Shareholders) (as a whole) than the terms of the Competing Proposal, taking into account all terms and conditions and other aspects of the Bidder Counterproposal and the Competing Proposal respectively.
- (b) If, in accordance with clause 12.6(a)(v), Bidder provides to Target a Bidder Counterproposal, Target must procure that the Target Board considers the Bidder Counterproposal and determines whether, acting reasonably and in good faith, the Bidder Counterproposal would provide an equivalent or superior outcome to Target Shareholders (other than Excluded Shareholders) as a whole compared with the Competing Proposal. Following that determination, Target must:
- (i) procure that the Target Board promptly, and in any event within 3 Business Days, notifies Bidder of the determination in writing, stating reasons for that determination; and
 - (ii) if the determination is that the Bidder Counterproposal would provide an equivalent or superior outcome to Target Shareholders (other than

Excluded Shareholders) as a whole compared with the Competing Proposal, then for a period of 3 Business Days after Target delivers to Bidder the notice referred to above, Target and Bidder must use their best endeavours to agree the transaction documentation required to implement the Bidder Counterproposal as soon as reasonably practicable. Target must procure that each of the Target Directors continues to recommend the Scheme (as modified by the Bidder Counterproposal) to Target Shareholders (other than Excluded Shareholders) during the period referred to in this clause 12.6(b)(ii).

- (c) For the purpose of this clause 12.6:
- (i) each new Competing Proposal or successive material variation or amendment to a Competing Proposal will constitute a new Competing Proposal; and
 - (ii) for the avoidance of doubt, the process set out in this clause 12.6 must again be followed in respect of each new Competing Proposal or successive material variation or amendment to a Competing Proposal prior to Target or the Target Board taking any of the actions referred to in clauses 12.6(a)(i) or 12.6(a)(ii).
- (d) Despite any other provision in this deed, a statement by Target, Target Board or any Target Director to the effect that:
- (i) the Target Board has determined that a Competing Proposal is or may be a Superior Proposal and has commenced the matching right process set out in this clause 12.6; or
 - (ii) Target Shareholders should take no action pending the completion of the matching right process set out in this clause 12.6,
- does not of itself:
- (iii) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the recommendation by the Target Directors or an endorsement of a Competing Proposal;
 - (iv) contravene this deed;
 - (v) give rise to an obligation to pay the Break Fee under clause 13.2; or
 - (vi) give rise to a termination right under clause 15.1.

12.7 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 12 or any part of it:
- (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;
 - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (iii) was, or is, or would be, unlawful for any other reason,

then, to that extent (and only to that extent) Target will not be obliged to comply with that provision of clause 12.

- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 12.7.

12.8 Usual provision of information

Nothing in this clause 12 prevents Target from:

- (a) providing any information to its Related Persons;
- (b) providing any information to any Government Agency;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Government Agency;
- (d) providing any information to its auditors, clients, financiers, joint venturers, suppliers contractual counterparties or shareholders in the ordinary course of business;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers in the ordinary course of business consistent with the 12 months prior; or
- (f) promoting the merits of the Transaction.

13. Break Fee

13.1 Background to Break Fee

- (a) Each party acknowledges that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 13.4.
- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in clauses 13.2, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Target and the Target Board believe, having taken advice from its external legal adviser, that the implementation of the Scheme will provide benefits to it and its shareholders, and that it is reasonable that Target agree to the Break Fee in accordance with this clause 13 in order to secure Bidder's participation in the Transaction.

13.2 Break Fee triggers

Subject to clauses 13.5, 13.6 and 13.9, Target must pay the Break Fee to Bidder if:

- (a) during the Exclusivity Period, any Target Director:
 - (i) fails to recommend the Scheme in the manner described in clause 8.1(b);
 - (ii) withdraws, changes, adversely modifies or adversely qualifies their Recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme;
 - (iii) fails to vote, or procure the voting of, any Target Shares in which they have a Relevant Interest at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting; or
 - (iv) recommends, supports or endorses a Competing Proposal,

in each case provided that Bidder has terminated this deed in accordance with clause 15 and other than in circumstances where:

- (v) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Scheme is not in the best interests of Target Shareholders (other than Excluded Shareholders) (except where that conclusion is a result of the existence, announcement or publication of a Competing Proposal (including, but not limited to, a Superior Proposal));
- (vi) the failure to recommend, or the adverse change, withdrawal, adverse modification or adverse qualification of a recommendation to vote in favour of the Scheme occurs because of a requirement by a court of competent jurisdiction, ASIC or the Takeovers Panel that one or more Target Directors abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this deed; or
- (vii) Target is entitled to terminate this deed pursuant to clause 15.1(a) or 15.2(b), and has given the appropriate termination notice to Bidder,

provided that, for the avoidance of doubt, a statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 12.6 will not, by itself, require Target to pay the Break Fee to Bidder;

- (b) at any time before the End Date or, if earlier, the date this deed is terminated under clause 15, a Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party (either alone or together with any Associate):
 - (i) completes a Competing Proposal of the kind referred to in any of paragraphs (b), (c) and (d) of the definition of Competing Proposal; or
 - (ii) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, 50% or more of Target Shares and that acquisition is unconditional; or
- (c) Bidder has terminated this deed pursuant to clauses 15.1(a)(i) or 15.2(a) and the Transaction does not complete.

13.3 Timing of payment of Break Fee

- (a) A demand by Bidder for payment of the Break Fee under clause 13.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment and termination of this deed;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which Target is to pay the Break Fee.
- (b) Target must pay the Break Fee into the account nominated by Bidder, without set-off or withholding, within 20 Business Days after receiving a demand for payment under clause 13.3(a) where Bidder is entitled under clause 13.2 to the Break Fee.

13.4 Basis of Break Fee

Target and Bidder acknowledge and agree that the amount of the Break Fee has been calculated to reimburse Bidder for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Bidder and Bidder's employees, advisers and agents in planning and implementing the Transaction,

in each case, incurred by Bidder directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and Target and Bidder agree that:

- (e) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Break Fee is a genuine and reasonable pre-estimate of those costs.

13.5 Compliance with law

- (a) This clause 13 does not impose an obligation on Target to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
 - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (ii) is determined to be unenforceable or unlawful by a court,

and Bidder will refund to Target within 5 Business Days any amount in excess of its obligation under this clause that Target has already paid to Bidder when that declaration or determination is made (unless otherwise required by the Takeovers Panel or a court).

- (b) For the avoidance of doubt, any part of the Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Target.
- (c) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.5(a).

13.6 Break Fee payable only once

Where the Break Fee becomes payable to Bidder under clause 13.2 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent Break Fee.

13.7 Other Claims

Despite anything to the contrary in this deed, the maximum aggregate liability of Target for any Claims under this deed is the Break Fee and in no event will the aggregate liability of Target for Claims under this deed and in connection with the Transaction or the Scheme exceed the Break Fee other than in the case of fraud or wilful default.

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13.8 Exclusive remedy

Where the Break Fee is paid to Bidder under this deed (or would be payable if a demand was made), Bidder cannot make any further Claim against Target or the Target Indemnified Parties other than in the case of fraud or wilful default.

13.9 No Break Fee if Scheme Effective or entitled to terminate

Despite anything to the contrary in this deed, the Break Fee will not be payable to Bidder if:

- (a) the Scheme becomes Effective; or
- (b) at the time that the Break Fee becomes payable under clause 13.2, Target was entitled to terminate this deed under clauses 15.1(a)(i) or 15.2(b) and has given the appropriate termination notice to Bidder,

notwithstanding the occurrence of any event in clause 13.2, any amount or part of the Break Fee that has already been paid to Bidder must be refunded by Bidder and:

- (c) where clause 13.9(a) applies, such amount must be refunded by Bidder to Target within 5 Business Days after the Scheme becomes Effective; or
- (d) where clause 13.9(b) applies, within 5 Business Days after the date Target notifies Bidder that, at the time that the Break Fee became payable under clause 13.2, Target was entitled to terminate this deed under clauses 15.1(a)(i) or 15.2(b).

14. Reverse Break Fee**14.1 Background to Reverse Break Fee**

- (a) Target and Bidder acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Target will incur significant costs, including those set out in clause 14.4.
- (b) In the circumstances referred to in clause 14.1(a), Target has requested that provision be made for the payments outlined in clause 14.3, without which Target would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Bidder believes, having taken advice from its external legal adviser, that the implementation of the Scheme will provide benefits to Bidder and that it is appropriate for Bidder to agree to the payments referred to in clause 14.3 in order to secure Target's participation in the Transaction.
- (d) Bidder and Target must not make or cause or permit to be made any application to the Takeovers Panel or a court for or in relation to a declaration or determination that the Reverse Break Fee is invalid or unenforceable.

14.2 Reverse Break Fee triggers

Bidder must pay the Reverse Break Fee to Target if:

- (a) Target has terminated this deed pursuant to clauses 15.1(a)(i) or 15.2(b); or
- (b) the Scheme becomes Effective but Bidder does not pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

14.3 Payment of Reverse Break Fee

- (a) A demand by Target for payment of the Reverse Break Fee under clause 14.2 must:
- (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of Target into which Bidder is to pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee into the account nominated by Target, without set-off or withholding, within 20 Business Days after receiving a demand for payment under clause 14.3(a) where Target is entitled under clause 14.2 to the Reverse Break Fee.

14.4 Basis of Reverse Break Fee

Bidder and Target acknowledge and agree that the amount of the Reverse Break Fee has been calculated to reimburse Target for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Target and Target's employees, advisers and agents in planning and implementing the Transaction,

in each case, incurred by Target directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and Target and Bidder agree that:

- (e) the costs actually incurred by Target will be of such a nature that they cannot all be accurately ascertained; and
- (f) the genuine and reasonable pre-estimate of those costs would equal or exceed the Reverse Break Fee.

14.5 Reverse Break Fee payable only once

Where the Reverse Break Fee becomes payable to Target under clause 14.2 and is actually paid to Target, Target cannot make any claim against Bidder for payment of any subsequent Reverse Break Fee.

14.6 Other Claims

Subject to clause 14.8, the maximum aggregate liability of Bidder for any Claims under this deed is the Reverse Break Fee and in no event will the aggregate liability of Bidder for Claims under this deed and in connection with the Transaction or the Scheme exceed the Reverse Break Fee other than in the case of fraud or wilful default.

14.7 Exclusive remedy

Subject to clause 14.8, where the Reverse Break Fee is paid to Target under this deed (or would be payable if a demand was made), Target cannot make any further Claim against Bidder or the Bidder Indemnified Parties other than in the case of fraud or wilful default.

14.8 Claims under the Deed Poll and Equity Commitment Letters

Nothing in clauses 14.6 or 14.7 or otherwise in this deed will limit Bidder's liability under or in connection with a breach of the Deed Poll or, once the Scheme is Effective, the Equity Commitment Letters.

14.9 No Reverse Break Fee if Scheme Effective or entitled to terminate

Despite anything to the contrary in this deed, the Reverse Break Fee will not be payable to Target if:

- (a) the Scheme becomes Effective; or
- (b) at the time that the Reverse Break Fee becomes payable under clause 14.2, Bidder was entitled to terminate this deed under clauses 15.1(a)(i), 15.1(b) or 15.2(a) and has given the appropriate termination notice to Target,

notwithstanding the occurrence of any event in clause 14.2, any amount or part of the Reverse Break Fee that has already been paid to Target must be refunded by Target and:

- (c) where clause 14.9(a) applies, such amount must be refunded by Target to Bidder within 5 Business Days after the Scheme becomes Effective; or
- (d) where clause 14.9(b) applies, within 5 Business Days after the date Bidder notifies Target that, at the time that the Reverse Break Fee became payable under clause 14.2, Bidder was entitled to terminate this deed under clauses 15.1(a)(i), 15.1(b) or 15.2(a).

15. Termination**15.1 Termination for material breach**

- (a) Either Target or Bidder may terminate this deed by written notice to the other party:
 - (i) other than in respect of a breach of either a Bidder Representation and Warranty or a Target Representation and Warranty (which are dealt with in clause 15.2), at any time before 8.00am on the Second Court Date if the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given (in which case termination under this clause 15.1(a)(i) will take effect at the expiry of that period);
 - (ii) in the circumstances set out in, and in accordance with, clause 3.4;
 - (iii) if Target Shareholders (other than Excluded Shareholders) have not agreed to the Scheme at the Scheme Meeting by the requisite majorities and notice is not given under clause 3.4(d); or

- (iv) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) Bidder may terminate this deed by written notice to Target until 8.00am on the Second Court Date if any of the Target Directors:
- (i) fails to recommend the Scheme in the manner described in clause 8.1(a);
 - (ii) withdraw, adversely change, adversely modify or adversely qualify their Recommendation; or
 - (iii) make a public statement:
 - A. to the effect that they no longer support the Scheme; or
 - B. indicating that they no longer recommend the Transaction or recommend that Target Shareholders (other than Excluded Shareholders) accept or vote in favour of a Competing Proposal (but excluding a statement to the effect that no action should be taken by Target Shareholders pending assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 12.6).
- (c) Target may terminate this deed by written notice to Bidder at any time before 8.00am on the Second Court Date if, a majority of the Target Directors:
- (i) fails to recommend the Scheme in the manner described in clause 8.1(a);
 - (ii) withdraw, adversely change or adversely modify or adversely qualify their Recommendation that Target Shareholders (other than Excluded Shareholders) vote in favour of the Scheme in the manner described in clause 8.1(a); or
 - (iii) makes a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 12.6) in accordance with this deed,
- in each case provided that that action was expressly permitted under clause 8.1(c) of this deed.
- (d) A failure to recommend or withdrawal of a recommendation due to a court or Government Agency requirement or request that a Target Director abstains from making a recommendation will be disregarded under clauses 15.1(b) and 15.1(c).

15.2 Termination for breach of representations and warranties

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this deed for a:
- (i) breach of a Target Representation and Warranty in clause (j) (*Capital structure and Target Incentives*) of Schedule 1; or
 - (ii) material breach of a Target Representation and Warranty,

only if:

- (iii) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
- (iv) the relevant breach continues to exist 3 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(a)(iii).

(b) Target may, at any time before 8.00am on the Second Court Date, terminate this deed for a:

- (i) breach of a Bidder Representation and Warranty in clauses (m) (*Equity Commitment Letters*), (n) (*Debt Commitment Letters*), (o) (*Sufficient cash amounts - reasonable expectation as at the date of this deed*), (p) (*Sufficient cash amounts - unconditional at Second Court Date*) and (t) (*HoldCo Share*) of Schedule 2; or
- (ii) material breach of a Bidder Representation and Warranty other than those listed in clause 15.2(b)(i),

only if:

- (iii) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
- (iv) the relevant breach, to the extent it is of a Bidder Representation and Warranty:
 - A. in clause (n) (*Debt Commitment Letters*), (o) (*Sufficient cash amounts - reasonable expectation as at the date of this deed*), (p) (*Sufficient cash amounts - unconditional at Second Court Date*) or (t) (*HoldCo Share*) of Schedule 2, continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(iii);
 - B. in clause (m) (*Equity Commitment Letters*) of Schedule 2, continues to exist 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(iii); and
 - C. other than a Bidder Representation and Warranty listed in clause 15.2(b)(i), continues to exist 3 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(iii).

(c) This deed is terminable if agreed to in writing by Bidder and Target.

15.3 Effect of termination

If this deed is terminated by either party under clauses 3.4, 15.1 or 15.2:

- (a) each party will be released from its obligations under this deed, except that this clause 15.3, and clauses 1, 9.5 - 9.9, 10.1, 10.2, 11, 13, 14, 17, 18 (except clause 18.7) and 19, will survive termination and remain in force;

- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed (including in respect of the breach giving rise to termination, if applicable) or that otherwise accrued before termination of this deed; and
- (c) in all other respects (but, for the avoidance of doubt, subject to clause 15.3(a)), all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

15.4 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 party stating that it terminates this deed and the provision under which it is terminating this deed and otherwise complies with the requirements of the relevant clause of this deed.

15.5 No other termination

Neither party may terminate or rescind this deed, except as permitted under clauses 3.4, 15.1 or 15.2.

16. Notices

16.1 How notice to be given

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

- (a) must be given to a party:
 - (i) by hand delivery, courier service, prepaid express post or email; and
 - (ii) using the address or other details for the party set out in the below table (or as otherwise notified by that party to each other party from time to time under this clause 16):

Party name	Attention	Address	Email address
Target	Heidi Aldred, Company Secretary	Level 5, 40 Mount Street, North Sydney, NSW, 2060	heidi.aldred@invokecare.com.au
	With a copy to Clayton Utz: Rory Moriarty and Kimberley Grellinger	Level 15, 1 Bligh Street, Sydney NSW 2000	rmoriarty@claytonutz.com kgrellinger@claytonutz.com
Bidder	Nick Kay With a copy to Gilbert + Tobin: Peter Cook, Alex Kauye and Sam Kings	Level 38, 80 Collins Street, Melbourne, VIC 3000	nkay@tpg.com pcook@gtlaw.com.au akauye@gtlaw.com.au skings@gtlaw.com.au

- (b) must be in legible writing and in English;

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- (c) (in the case of communications other than email) must be signed by the sending party or by a person duly authorised by the sending party;
- (d) (in the case of email) must:
 - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this deed; and
 - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender.

16.2 When notice taken to be received

Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be given by the sender and received by the recipient:

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
- (d) (in the case of email, whether or not containing attachments) the earlier of:
 - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - (ii) receipt by the sender of an automated message confirming delivery; and
 - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
 - (i) the recipient is absent from the place at which the communication is delivered or sent;
 - (ii) the communication is returned unclaimed; and
 - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next

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working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

16.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 16 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 16.2.

17. GST

17.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 17.1(b), terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) A reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which the representative member of any GST group to which that entity may belong is entitled. A reference to the GST payable by an entity includes GST payable by the representative member of any GST group to which that entity may belong.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) Any consideration for a supply that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to that supply for the purpose of this clause.

17.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

17.3 GST payable

- (a) If GST is payable by a party (**Supplier**) in relation to a taxable supply the Supplier has made under or in connection with this deed, then the party (**Recipient**) that is required to provide consideration for that supply must, subject to clause 17.1(d), pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 17.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this deed pursuant to clause 17.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 17.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 17.3(a) then the Supplier will provide a corresponding refund or credit to, or will be entitled

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to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 17.3(a). Where there is an adjustment event, the Supplier must promptly issue an adjustment note to the Recipient.

18. General

18.1 Entire agreement

This deed (including the documents in the attachments to it), the Confidentiality and Process Agreement and any other document agreed by the parties in writing for the purposes of this clause 18.1 (each a **Relevant Document** and together the **Relevant Documents**) state all the express terms agreed by the parties in respect of their subject matter. The Relevant Documents set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all prior Conduct, discussions and negotiations in respect of their subject matter. Without limiting clause 9.10, no party has relied on or is relying on any other Conduct in entering into this deed and completing the transactions contemplated by it.

18.2 No merger

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

18.3 Severance

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

18.4 Waivers

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

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

18.5 Amendments

A variation of any term of this deed must be in writing and signed by the parties.

18.6 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.

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- (b) Notwithstanding any other provision of this deed, Bidder's rights under this deed may be encumbered by way of security (whether by charge, mortgage or otherwise) for the benefit of each financial institution or group of financial institutions, bank or other provider of finance, including any agent or trustee acting on behalf of the foregoing in connection with the Debt Financing.
- (c) A breach of clause 18.6(a) by a party shall be deemed to be a material breach for the purposes of clause 15.1(a)(i).
- (d) Clause 18.6(c) does not affect the construction of any other part of this deed.

18.7 Further acts and documents

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

18.8 Stamp duty

Bidder:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Target against any liability arising from its failure to comply with clause 18.8(a).

18.9 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, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

18.10 Counterparts

This deed may be executed in any number of counterparts. Each counterpart constitutes an original of this deed, and all together constitute one deed.

18.11 Relationship of the parties

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

18.12 Remedies cumulative

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

18.13 Exercise of rights

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority,

discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

18.14 Withholding

- (a) If Bidder is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the Commissioner of Taxation, Bidder is permitted to deduct the relevant amounts from the Scheme Consideration paid to those Target Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to those Target Shareholders by Bidder as Scheme Consideration will not be increased to reflect such deduction and the net aggregate sum payable to those Target Shareholders shall be taken to be in full and final satisfaction of Bidder's obligation to pay the Scheme Consideration to those Target Shareholders.
- (b) Bidder acknowledges and agrees that it must not deduct from the Scheme Consideration or pay to the Commissioner of Taxation any amounts under clause 18.14(a) with respect to a Target Shareholder where it has received an entity declaration from the Target Shareholder at least 5 Business Days prior to the Implementation Date (**Entity Declaration**) and:
 - (i) the entity declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and applies to a period that includes the Implementation Date; and
 - (ii) Bidder does not know that the Entity Declaration is false.
- (c) If Bidder forms the view (acting reasonably) that an Entity Declaration it has received from a Target Shareholder is false, and Bidder received the Entity Declaration more than 30 days before the Implementation Date, Bidder agrees that it will not under clause 18.14(a) deduct from the Scheme Consideration or pay to the Commissioner of Taxation any amounts in respect of that Target Shareholder unless:
 - (i) Bidder has, no fewer than 20 days before the Implementation Date, provided written notice to the Target Shareholder who has provided that Entity Declaration detailing the information upon which it relied to form that view;
 - (ii) having provided the written notice referred to in clause 18.14(c)(i) to the Target Shareholder, Bidder has provided that Target Shareholder the opportunity to review the information in that notice and respond with its views on the matters set out in that notice by or before the date that is 10 days before the Implementation Date; and
 - (iii) the Target Shareholder has either not responded to that notice by the time specified in clause 18.14(c)(ii), or has responded to that notice and Bidder, after having considered in good faith that response, continues to hold the view that it has knowledge that the Entity Declaration it has received from that Target Shareholder is false.
- (d) Target agrees that Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that Bidder reasonably requires for the purpose of making any such approach. Bidder agrees:
 - (i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO for the purposes of enabling Target to comment on the materials;

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- (ii) to consider in good faith any reasonable comments from Target on those materials which Target must provide on a timely basis; and
- (iii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without Target's prior written consent.
- (e) The parties agree to consult with each other in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process described in clause 18.14(d) in respect of any Target Shareholder.

19. Governing law, jurisdiction and service of process

19.1 Governing law

This deed is governed by the law applying in New South Wales, Australia.

19.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19.2(a).

19.3 Service of process

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.

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Schedule 1 - Target Representations and Warranties

Target represents and warrants to Bidder (on its own behalf and separately as trustee for each Bidder Indemnified Party) that:

- (a) **(Target Information)** the Target Information contained in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **(Basis of Target Information)** the Target Information:
 - (i) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by or on behalf of Target 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;

- (c) **(New information)** it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including by way of omission);
- (d) **(Validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **(Authority)** the execution and delivery by Target of the Transaction Documents to which Target is party has been, or will be by the relevant time, properly authorised by all necessary corporate action of Target and Target has taken, or will take by the relevant time, all necessary corporate action and Target has full corporate power and lawful authority to perform or cause to be performed its obligations under and the transactions contemplated by the Transaction Documents to which it is a party;
- (f) **(Power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform the Transaction Documents to which it is a party;
- (g) **(No default)** the Transaction Documents to which it is a party do not conflict with or result in the breach of or a default under:
 - (i) any provision of Target's constitution; or
 - (ii) any material contract or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Target Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing those Transaction Documents;

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- (h) **(Transaction Documents binding)** the Transaction Documents to which it is a party are or will be by the relevant time valid and binding obligations of Target, enforceable in accordance with their terms;
- (i) **(Continuous disclosure)** so far as Target is aware, it has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, as at the date of this deed it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **(Capital structure and Target Incentives)**
- (i) its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, share rights, performance rights or other instruments which are still outstanding and may convert into Target Shares other than as set out in Schedule 3 and other than pursuant to the terms of and that apply to the Target Equity Incentives, it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, share rights, performance rights or other securities or instruments in Target; and
- (ii) full details of all Target Incentives are contained in the Disclosure Letter and all information in the Disclosure Letter that relates to Target Incentives (including the representations and warranties in relation to the Retention Agreements) is true, accurate and complete in all respects, and is not misleading or deceptive in any respect (including by omission);
- (k) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or another Target Group Member, nor, as far as Target is aware, has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (l) **(Disclosure Materials)** it has collated and prepared and made available to Bidder all of the Disclosure Materials in good faith for the purposes of a due diligence process and in this context:
- (i) so far as Target is aware, the Disclosure Materials have been collated with all reasonable care and skill and are accurate in all material respects and not materially false or misleading (including by omission or otherwise); and
- (ii) no information has been intentionally omitted from the Disclosure Materials that, in Target's reasonable opinion, would be material to a reasonable and sophisticated buyer's evaluation of the Target Group or decision whether to proceed with the Transaction.

For the avoidance of doubt, Target makes no representation or warranty whatsoever:

- (iii) in relation to any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed; or
- (iv) as to the adequacy or sufficiency of the Disclosure Materials for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisitions, which are matters of which Bidder has to satisfy itself;

- (m) **(Compliance with laws)** as far as Target is aware, each member of the Target Group has complied in all material respects with all laws and regulations applicable to the Target Group and its business or orders of Government Agencies having jurisdiction over the Target Group or its business and there is no judgment, injunction, order or decree binding on any member of the Target Group that would be reasonably likely to have material adverse impact on the Target Group as a whole;
- (n) **(No contravention of Corporations Act or Listing Rules)** as far as Target is aware, neither ASIC nor ASX has made a determination against any Target Group Member for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the Listing Rules;
- (o) **(Material licences and authorisations)** as far as Target is aware, the Target Group has all material licences, authorisations and permits necessary for it to conduct the business of the Target Group as it is being conducted as at the date of this deed and no Target Group Member:
- (i) is in material breach of, or default under, any such licence, authorisation or permit; or
 - (ii) has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, authorisation or permit;
- (p) **(No other shareholder or regulatory approvals)** other than as expressly contemplated in clauses 3.1(a) (*Regulatory Approvals*) and 3.1(d) (*Target Shareholder approval*) or as required from ASIC, ASX and the Court, no other approvals from Target Shareholders or regulatory authorities are required to be obtained by Target in order for Target to execute and perform the Transaction Documents to which it is a party;
- (q) **(No pending change in law or regulation)** as far as Target is aware, there is no pending or proposed change in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or policy of a Government Agency that will, or is reasonably likely to, have a material adverse impact on the Target Group as a whole;
- (r) **(Advisers' fees)** as at the date of this deed, Target has Fairly Disclosed in the Disclosure Letter the aggregate amount paid or payable by a Target Group Member to any financial, legal, accounting or other advisor in connection with the Transaction;
- (s) **(Financial statements)** as far as Target is aware:
- (i) there has not been any event, circumstance, matter, event, change, effect or development that would require the Target to restate its financial statements as disclosed to ASX; and
 - (ii) its financial statements for the financial year ended 31 December 2022 and half year ended 30 June 2022;
 - A. comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, applicable accounting standards and all other applicable laws and regulations; and
 - B. give a true and fair view of the financial position and the assets and liabilities of the Target Group;

- (t) **(Material contracts)** as far as Target is aware, no Target Group Member is in material default under a material contact to which it is a party, and nothing has occurred which is an event of default or give another party a termination right;
- (u) **(No litigation)** as far as Target is aware, as at the date of this deed, no Target Group Member is:
- (i) a party to any material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
 - (ii) the subject of any material ruling, judgement, order, declaration or decree by any Government Agency, and as far as the Target is aware, there is no such material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation, dispute resolution, litigation, ruling, judgement, order, declaration or decree pending, threatened or anticipated, against any Target Group Member;
- (v) **(Property)**
- (i) no Target Group Member has any interest in land except for its interest in the properties listed in the Data Room (**Properties**);
 - (ii) the Properties comprise all the land and premises owned, used or occupied by a Target Group Member on its own account or for the benefit of another Target Group Member;
 - (iii) so far as Target is aware, the Target Group Members have the exclusive occupation and quiet enjoyment of the **Leasehold Properties**, being those Properties listed in listed in the Data Room; and
 - (iv) it is not aware of any Target Group Member being in material breach or material default under any of the leases or licences under which it occupies any of the Properties;
- (w) **(Employees)** as far as Target is aware:
- (i) each Target Group Member materially complies with all obligations under employment contracts, industrial agreements and awards, and with all codes of conduct and practice relevant to conditions of service and to the relations between it and the employees employed by it; and
 - (ii) no Target Group Member has:
 - A. been involved in any dispute with any union or employee or contractor of the Target Group in the 12 months prior to the date of this deed that would be reasonably likely to have material adverse financial impact on the Target Group as a whole; or
 - B. received a notice from a Government Agency that it has outstanding any material undischarged liability to pay to a Government Agency any contribution, Taxes or other impost arising in connection with the employment or engagement of personnel by the Target Group;

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- (x) **(Intellectual property)**
 - (i) so far as Target is aware, a Target Group Member is the sole legal and beneficial owner of the Target Group IP;
 - (ii) so far as Target is aware, no person:
 - A. is infringing the; or
 - B. has an right to use, or any interest in, or may benefit from, any,

Target Group IP;

and

 - (iii) so far as Target is aware, the Target Group IP and the Third Party IP are all the Intellectual Property Rights that are necessary to the conduct of the business of the Target Group as carried on as at the date of this deed; and
- (y) **(Anti-bribery)** as far as Target is aware, no Target Group Member or any director, officer or employee of the Target Group, or any other person acting on behalf of any Target Group Member, has:
 - (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
 - (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
 - (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,

and in each case, in violation of any applicable domestic or foreign anti-bribery laws in Australia or any other jurisdiction which is applicable to the Target Group.

Schedule 2 - Bidder Representations and Warranties

Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that:

- (a) **(Bidder Information)** the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **(Basis of Bidder Information)** the Bidder Information:
 - (i) will be provided to Target in good faith and on the understanding that Target and each other Target Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by 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 purpose of preparing the Independent Expert's Report;

- (c) **(New information)** it will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission);
- (d) **(Validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **(Authority)** the execution and delivery by Bidder of the Transaction Documents to which Bidder is party has been, or will be properly authorised by all necessary corporate action of Bidder, and Bidder has taken or will take all necessary corporate action to authorise the performance of Bidder of the Transaction Documents to which it is party and to carry out the transactions contemplated by the Transaction Documents to which it is party;
- (f) **(Power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform this Transaction Documents to which it is a party;
- (g) **(No default)** the Transaction Documents to which it is a party do not conflict with or result in the breach of or a default under:
 - (i) any provision of Bidder's constitution or other constituent documents; or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Bidder Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing those Transaction Documents;

- (h) **(Deed binding)** this deed is a valid and binding obligation of Bidder, enforceable in accordance with its terms;

- (i) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or another Bidder Group Member, nor has any regulatory action of any nature been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Scheme;
- (j) **(Dealings with Target Shareholders)** no Bidder Group Member has any agreement, arrangement or understanding (whether written or oral) with any Target Shareholder relating in any way to the Transaction or the operation of Target's business after implementation of the Scheme;
- (k) **(Dealings with officers and employees)** no Bidder Group Member has any agreement, arrangement or understanding with any director, officer or employee of any Target Group Member relating in any way to the Transaction or the operation of Target's business after implementation of the Scheme;
- (l) **(No regulatory approvals)** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Government Agency in order to execute and perform this deed, other than the Regulatory Approvals;
- (m) **(Equity Commitment Letters)**
- (i) Bidder has disclosed a true and complete copy of the Equity Commitment Letters to Target;
 - (ii) the parties (other than Target) to the Equity Commitment Letters have duly executed the Equity Commitment Letters and that they constitute legally binding obligations of those parties and are enforceable in accordance with their terms;
 - (iii) the Equity Commitment Letters have not been:
 - A. terminated without the prior written consent of Target or rescinded, and the Bidder is not in default thereunder; or
 - B. amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll and any Reverse Break Fee in accordance with this deed; and
 - (iv) without the prior written consent of Target, Bidder will not and must procure that each other Bidder Group Member does not:
 - A. replace, amend, or agree to amend, the Equity Commitment Letters;
 - B. waive, or agree to waive, any of its rights under the Equity Commitment Letters; and
 - C. agree or consent to any novation, assignment or transfer or any counterparty's obligation under the Equity Commitment Letters,

where to do so will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll and any Reverse Break Fee in accordance with this deed;

- (n) **(Debt Commitment Letter)**
- (i) Bidder has disclosed a true and complete copy of the Debt Commitment Letter to Target;
 - (ii) the Debt Commitment Letter has been duly executed by those parties thereto and constitutes legally binding obligations of those parties that are enforceable in accordance with its terms;
 - (iii) the Debt Commitment Letter has not been:
 - A. terminated or rescinded, and the Bidder is not in default thereunder; or
 - B. amended in any respect which will, or is reasonably likely to prejudice the Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll;
 - (iv) without the prior written consent of Target, Bidder will not and must procure that each other Bidder Group Member does not:
 - A. terminate the Debt Commitment Letter;
 - B. replace, amend, or agree to amend, the Debt Commitment Letter;
 - C. waive, or agree to waive, any of its rights under the Debt Commitment Letter; and
 - D. agree or consent to any novation, assignment or transfer of any counterparty's obligation under the Debt Commitment Letter,
 - where to do so will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme consideration in accordance with this deed, the Scheme and the Deed Poll; and
 - (v) Bidder will enforce its rights under the Debt Commitment Letter to the extent that failure to do so is reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll;
- (o) **(Sufficient cash amounts – reasonable expectation at date of this deed)** at all times between the date of this deed and 8.00am on the Second Court Date, Bidder has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed and the Deed Poll;
- (p) **(Sufficient cash amounts – unconditional at Second Court Date)** by 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions related to the Court approval or other procedural matters which, by their nature, can only be satisfied or performed after the Second Court Date) sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;

- (q) **(Dealings in Target Shares)** as at the date of this deed, except for the Bidder Shareholding:
- (i) the Bidder Group Members do not have a Relevant Interest in any Target Shares, and no Bidder Group Member has a Relevant Interest in, or a right to acquire, any other Target Shares; and
 - (ii) no Bidder Group Member has entered into any agreement, arrangement or understanding that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of Target Shares or of any assets of any Target Group Member (including cash-settled derivative contract, contracts for difference or other derivative contracts);
- (r) **(Transfer or acquisition of Target Shares)** any Target Shares that form part of the Bidder Shareholding will either be:
- (i) transferred to Bidder (or the entity appointed under clause 2.2, if applicable) before the Implementation Date; or
 - (ii) acquired by Bidder on the Implementation Date under the Scheme;
- (s) **(Tax)**
- (i) HoldCo is the ultimate holding company (as defined in section 124-780 of the Tax Act) of a wholly-owned group (as defined in section 975-500 of the Tax Act) of which Bidder is a member;
 - (ii) HoldCo will not make a choice under subsection 124-795(4) of the Tax Act before the Implementation Date;
 - (iii) no member of the wholly-owned group (as defined in section 975-500 of the Tax Act) of which HoldCo is the ultimate holding company (as defined in section 124-780 of the Tax Act) will:
 - A. issue equity to (other than the HoldCo Shares, being the replacement interest for the purposes of section 124-780 of the Tax Act); or
 - B. raise new debt from,
 - an entity that is not a member of the wholly-owned group in relation to the issue of the HoldCo Shares to the relevant Scheme Shareholders under the Scheme; and
 - (iv) HoldCo is, or will be, the head company of an income tax consolidated group such that Target will join HoldCo's income tax consolidated group on implementation of the Scheme; and
- (t) **(HoldCo Share)** each HoldCo Share will be duly authorised and validly issued, fully paid, free from all Encumbrances and any other third party rights, and will rank equally with all those HoldCo Shares then on issue.

Schedule 3 - Capital structure

Security	Total number on issue
Target Shares	144,060,733
Target Equity Incentives	479,572 Options; 17,665 Share Rights; 1,209,842 Performance Rights; and 42,891 Restricted Shares.

For personal use only

Executed as a deed.

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



Signature of director

Bart Vogel

Full name of director



Signature of company secretary/director

Richard Davis

Full name of company secretary/director

For personal use only

Executed by Eternal Aus BidCo Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth) by:



Signature of Nicholas James Kay who is the sole director and sole secretary of Eternal Aus BidCo Pty Ltd

For personal use only

Attachment 1 - Indicative Timetable

Event	Date
Scheme Booklet provided to ASIC in draft	Late August 2023
First Court Hearing	Mid September 2023
Scheme Meeting	Mid to late October 2023
Second Court Hearing	Late October 2023
Effective Date	Late October 2023
Special Dividend Record Date	Late October 2023
Special Dividend Payment Date	Late October 2023 / Early November 2023
Scheme Record Date	Late October 2023 / Early November 2023
Implementation Date	Mid November 2023

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Attachment 2 - Scheme of Arrangement

For personal use only

Scheme of arrangement made under section 411 of the Corporations Act 2001 (Cth)

Date

Parties InvoCare Limited ACN 096 437 393 of Level 5, 40 Mount Street, North Sydney, NSW 2060 (Target)

Each holder of Target Shares recorded in the Target Share Register on the Scheme Record Date (other than an Excluded Shareholder).

Background

- A. Target and Bidder have entered into the Implementation Deed, pursuant to which, amongst other things, Target agreed to propose this Scheme to Target Shareholders and each of Target and Bidder agreed to take certain steps to give effect to this Scheme.
- B. If this Scheme becomes Effective, Bidder and HoldCo will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the provisions of this Scheme, and Bidder will acquire all Scheme Shares and Target will enter Bidder in the Target Share Register as the holder of the Scheme Shares.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Unless the context requires otherwise, in this Scheme:

Aggregate Cash Consideration means the aggregate of the Cash Consideration payable to Scheme Shareholders under this Scheme (taking into account all valid Elections made on or before the Election Date and the terms of this Scheme).

Aggregate Scrip Consideration means the aggregate number of HoldCo Shares issued to Scheme Shareholders under this Scheme (taking into account all valid Elections made on or before the Election Date and the terms of this Scheme).

All Cash Consideration means the Cash Consideration for each Scheme Share held by a Scheme Shareholder.

All Scrip Consideration means the Scrip Consideration for each Scheme Share held by a Scheme Shareholder.

All Scrip Election Option means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the All Scrip Consideration for the Scheme Shares held by that Target Shareholder.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.

Bidder means Eternal Aus BidCo Pty Ltd (ACN 669 053 258).

For personal use only

Bidder Group means Bidder and each of its Related Bodies Corporate, and a reference to a 'Bidder Group Member' or a 'member of the Bidder Group' is to Bidder or any of its Related Bodies Corporate.

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

Cash Consideration means an amount of \$12.70 for each Scheme Share, as adjusted in accordance with clause 5.9(b) of the Implementation Deed (if applicable).

CHESS means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

CHESS Holding has the meaning given in the Settlement Rules.

Class B Share means a Class B Share in the capital of HoldCo having the rights set out in the HoldCo Constitution and HoldCo SHD.

Condition means each condition specified in clause 3.1 of the Implementation Deed.

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

Court means the New South Wales Supreme Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

Custodian has the meaning given in the HoldCo SHD.

Custom Consideration means, in respect of a Scheme Shareholder who has made a Custom Consideration Election Option:

- (a) the Cash Consideration for such number of Scheme Shares; plus
 - (b) the Scrip Consideration for such number of Scheme Shares,
- as agreed with Bidder (in its absolute discretion) in writing.

Custom Consideration Election Option means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Custom Consideration for the Scheme Shares held by that Target Shareholder.

Deed Poll means a deed poll to be entered into by Bidder and HoldCo substantially in the form of Attachment 3 to the Implementation Deed under which Bidder and HoldCo covenant in favour of the Scheme Shareholders to perform their obligations under this Scheme.

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

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

Election means:

- (a) a Mixed Election Option 1;
- (b) a Mixed Election Option 2;
- (c) a Mixed Election Option 3;
- (d) an All Scrip Election Option; or

(e) a Custom Consideration Election Option.

Election Date means 7.00pm on the date which is at least 5 Business Days prior to the date of the Scheme Meeting, or such other date as agreed in writing between Bidder and Target.

Election Form means the form of election under which a Target Shareholder (other than an Excluded Shareholder) is offered the opportunity to make an Election.

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

End Date means 31 December 2023 or such other date as agreed in writing by Target and Bidder.

Excluded Shareholder means any Target Shareholder who is a Bidder Group Member or any Target Shareholder who holds any Target Shares on behalf of, or for the benefit of, any Bidder Group Member and does not hold Target Shares on behalf of, or for the benefit of, any other person.

First Court Date means the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting 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 Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC, ASX, the Australian Competition and Consumer Commission, the Foreign Investment Review Board, the Australian Takeovers Panel and equivalent bodies outside Australia).

HoldCo means Eternal Aus HoldCo Ltd (ACN 669 042 782).

HoldCo Constitution means the constitution of HoldCo.

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

HoldCo Share means a fully paid Class B Share to be provided to Scheme Shareholders under this Scheme.

HoldCo SHD means the shareholders' deed in respect of the affairs of HoldCo to be entered into by the shareholders of HoldCo, amongst others, on substantially the terms set out in the term sheet in Attachment 4 to the Implementation Deed or such other form as agreed between Target and Bidder.

Implementation Date means the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.

Implementation Deed means the scheme implementation deed between Target and Bidder dated 9 August 2023.

Independent Expert means the independent expert in respect of this Scheme appointed by Target to prepare the Independent Expert's Report.

Independent Expert's Report means the report to be issued by the Independent Expert in connection with the Scheme, such report to be included in or to accompany the Scheme Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Target Shareholders (other than Excluded Shareholders) and the reasons for holding that opinion.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address shown in the Target Share Register at 7.00 pm on the Scheme Record Date is a place outside Australia and its external territories, unless Bidder determines that it is lawful and not unduly onerous or impracticable to provide that Scheme Shareholder with HoldCo Shares when this Scheme becomes Effective.

Issuer Sponsored Holding has the meaning given in the Settlement Rules.

Listing Rules means the official listing rules of the ASX.

Marketable Parcel has the meaning given to that term in the Listing Rules.

Maximum Cash Consideration means a cash amount equal to the value of the Cash Consideration multiplied by the total number of Scheme Shares.

Maximum Scrip Threshold means 20% of the total issued capital of HoldCo as at the Implementation Date.

Minimum Scrip Threshold means 5%, or such lesser percentage as notified by Bidder to Target in writing at least 3 Business Days prior to the date of the Scheme Meeting, of the total issued capital of HoldCo as at the Implementation Date.

Mixed Consideration Option 1 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 75% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 25% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 1.

Mixed Consideration Option 2 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 50% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 50% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 2.

Mixed Consideration Option 3 means:

- (a) the Cash Consideration for each Scheme Share, in respect of 25% of the Scheme Shares; plus
- (b) the Scrip Consideration for each Scheme Share, in respect of the other 75% of the Scheme Shares,

held by a Scheme Shareholder who has made a Mixed Election Option 3.

Mixed Election Option 1 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 1 for the Scheme Shares held by that Target Shareholder.

Mixed Election Option 2 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 2 for the Scheme Shares held by that Target Shareholder.

Mixed Election Option 3 means an election by a Target Shareholder (other than an Excluded Shareholder) to receive the Mixed Consideration Option 3 for the Scheme Shares held by that Target Shareholder.

Options means the options to acquire Target Shares issued under Target's long term incentives plans as listed in Schedule 3 to the Implementation Deed.

Performance Rights means the performance rights awarded or granted under Target's long-term incentive schemes and employee share schemes as listed in Schedule 3 to the Implementation Deed.

Registered Addresses means in relation to a Scheme Shareholder, the address of the Scheme Shareholder as recorded in Target Share Register.

Related Bodies Corporate has the meaning set out in section 50 of the Corporations Act.

Restricted Shares means the restricted Target Shares issued under Target's exempt employee share scheme as listed in Schedule 3 to the Implementation Deed.

Scaleback Mechanism means the scaleback mechanism set out in clause 5.9.

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Scheme Consideration, together with any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

Scheme Booklet means the scheme booklet to be prepared by Target in respect of the Scheme pursuant to section 412 of the Corporations Act to be dispatched to the Target Shareholders and which must include or be accompanied by:

- (a) a copy of this Scheme;
- (b) an explanatory statement complying with the requirements of the Corporations Act, the *Corporations Regulations 2001* (Cth) and ASIC Regulatory Guide 60;
- (c) the Independent Expert's Report;
- (d) a copy or summary of the Implementation Deed;
- (e) a copy of the executed Deed Poll;
- (f) a notice of meeting;
- (g) a proxy form(s); and
- (h) an Election Form.

Scheme Consideration means in respect of a Scheme Shareholder (depending on the Elections made by the Election Date and subject to the Scaleback Mechanism and the terms of this Scheme):

- (a) All Cash Consideration;
- (b) Mixed Consideration Option 1;

- (c) Mixed Consideration Option 2;
- (d) Mixed Consideration Option 3,
- (e) All Scrip Consideration; or
- (f) Custom Consideration.

Scheme Meeting means the meeting of Target Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Record Date means 7.00 pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.

Scheme Shareholder means a Target Shareholder as at the Scheme Record Date, other than any Excluded Shareholder.

Scheme Shares means all Target Shares held by the Scheme Shareholders as at the Scheme Record Date, and, for the avoidance of doubt, does not include any Target Share held by an Excluded Shareholder as at the Scheme Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Bidder as transferee, which may be or include a master transfer of all or part of the Scheme Shares.

Scrip Consideration means such number of HoldCo Shares for each Scheme Share as determined by Bidder at least 5 Business Days prior to the First Court Date, as adjusted in accordance with clause 5.9(b) of the Implementation Deed (if applicable).

Second Court Date means the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this 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.

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the *Personal Property Securities Act 2009* (Cth).

Settlement Rules means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

Share Rights means the rights to Target Shares issued under Target's employee share schemes as listed in Schedule 3 to the Implementation Deed.

Subsidiary has the meaning given in section 9 of the Corporations Act.

Target Equity Incentive means the Options, Share Rights, Performance Rights and Restricted Shares as listed in Schedule 3 to the Implementation Deed.

Target Group means Target and each of its Related Bodies Corporate, and a reference to a 'Target Group Member' or a 'member of the Target Group' is to Target or any of its Related Bodies Corporate.

Target Registry means Link Market Service Limited of Level 12, 680 George Street Sydney, NSW 2000.

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

Target Share Register means the register of members of Target maintained by the Target Registry in accordance with the Corporations Act.

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

Transaction means the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of the Implementation Deed.

Trust Account means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by or on behalf of Target as trustee for the Scheme Shareholders (except that any interest on the amount deposited, less bank fees and other charges, will accrue for the benefit of Bidder), details of which Target must notify to Bidder no later than 5 Business Days before the Implementation Date.

1.2 Business Day

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

1.3 Listing Rules are law

A Listing Rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this Scheme.

1.4 Interpretation

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

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this Scheme, and a reference to this Scheme includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;

- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (l) a reference to a date or time is to that date or time in Sydney, Australia; and
- (m) this Scheme (including any term or condition of it) must not be construed adversely to a party solely on the basis that the party prepared it or caused it to be prepared.

2. Preliminary matters

2.1 Target

- (a) Target is a public company limited by shares, incorporated in Australia and registered in the State of New South Wales, Australia.
- (b) Target is admitted to the official list of ASX and Target Shares are officially quoted on the ASX.
- (c) As at the date of the Implementation Deed:
 - (i) 144,060,733 Target Shares were on issue and officially quoted on ASX; and
 - (ii) the following Target Equity Incentives were on issue:
 - A. 479,572 Options;
 - B. 17,665 Share Rights;
 - C. 1,209,842 Performance Rights; and
 - D. 42,891 Restricted Shares.

2.2 Bidder

Bidder is a proprietary company limited by shares, incorporated and registered in the State of Victoria, Australia.

2.3 HoldCo

HoldCo is a proprietary company limited by shares, incorporated and registered in the State of Victoria, Australia.

2.4 Implementation Deed

Bidder and Target have agreed, by executing the Implementation Deed, to implement this Scheme (among other things).

2.5 Deed Poll

The Bidder and HoldCo have agreed, by executing the Deed Poll, to perform their respective obligations under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme.

3. Conditions precedent

3.1 Conditions

This Scheme is conditional on and will have no force or effect (and will not become Effective) unless and until each of the following conditions precedent is satisfied:

- (a) all of the Conditions in clause 3.1 of the Implementation Deed (other than the Condition in clause 3.1(f) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) this Scheme is approved by the Court under paragraph 411(4)(b) of the Corporations Act, including with such alterations or other conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Target and Bidder in writing (each acting reasonably);
- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by Target and Bidder in writing (each acting reasonably) are satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) of the Corporations Act (and if applicable, subsection 411(6) of the Corporations Act) approving this Scheme coming into effect pursuant to subsection 411(10) of the Corporations Act on or before the End Date (or any later date Target and Bidder agree in writing).

3.2 Certificate

- (a) Target and Bidder must provide to the Court on the Second Court Date a certificate (signed for and on behalf of Target and Bidder respectively), or such other evidence as the Court may require or request, confirming (in respect of matters within their knowledge) whether or not as at 8.00am on the Second Court Date the conditions in clauses 3.1(a) and 3.1(b) have been satisfied or waived in accordance with the Implementation Deed.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

3.3 End Date

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

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

unless Target and Bidder otherwise agree in writing (and, if required, as approved by the Court).

4. Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

For the purposes of subsection 411(10) of the Corporations Act, Target must lodge with ASIC an office copy of the orders made by the Court under paragraph 411(4)(b) of the Corporations Act approving this Scheme as soon as possible following such approval and, in any event, by no later than 5.00pm on the Business Day on which the Court approves this Scheme (or such later date as is agreed between the parties in writing).

4.2 Consequences of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) in consideration for the transfer of each Scheme Share to Bidder, Bidder and HoldCo will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll;
- (b) all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Bidder; and
- (c) Target will enter the name of Bidder in the Target Share Register in respect of all the Scheme Shares.

4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to Bidder providing or procuring the provision of the Scheme Consideration in the manner contemplated by this Scheme, all of the Scheme Shares, together with all rights and entitlements attaching to them at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target or its officers as agent and attorney of the Scheme Shareholders under clause 9.5) by:
 - (i) Target delivering to Bidder a duly completed and executed Scheme Transfer to transfer all of the Scheme Shares to Bidder, executed on behalf of the Scheme Shareholders by Target as their agent and attorney; and
 - (ii) Bidder duly executing such Scheme Transfer and delivering the executed and, if necessary, stamped, Scheme Transfer to Target for registration; and
- (b) as soon as reasonably practicable following receipt of the Scheme Transfer in accordance with clause 4.3(a)(ii), but subject to stamping of the Scheme Transfer (if necessary), Target must enter or procure the entry of, the name of Bidder in the Target Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

5. Scheme Consideration

5.1 Scheme Consideration

- (a) The Scheme Consideration in respect of each Scheme Share is either:

- (i) the All Cash Consideration;
 - (ii) the Mixed Consideration Option 1;
 - (iii) the Mixed Consideration Option 2;
 - (iv) the Mixed Consideration Option 3,
 - (v) the All Scrip Consideration; or
 - (vi) the Custom Consideration.
- (b) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder, subject to the terms of this Scheme.

5.2 Bidder undertakings in relation to Scheme Consideration

Subject to the terms of this Scheme, Bidder undertakes and warrants to Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration of the transfer to Bidder of each Target Share held by a Scheme Shareholder under the terms of this Scheme, on the Implementation Date, Bidder will:

- (a) accept that transfer;
- (b) provide, or procure the provision to, each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with:
 - (i) subject to clause 5.3 and any application of the Scaleback Mechanism, any Election made by that Scheme Shareholder as contemplated by clause 5.4;
 - (ii) clauses 5.5 and 5.6; and
 - (iii) the terms of this Scheme; and
- (c) on the Implementation Date:
 - (i) pay, or procure the payment of, to the Trust Account, an amount in cleared funds equal to the Aggregate Cash Consideration; and
 - (ii) subject to clause 5.3, procure the allotment of the Aggregate Scrip Consideration to applicable Scheme Shareholders (either directly or indirectly through the Custodian to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), subject to any applicable scaleback in accordance with the Scaleback Mechanism,

in each case in accordance with the terms of this Scheme and the Deed Poll.

5.3 Minimum Scrip Threshold not reached

If the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold:

- (a) Bidder will not:
 - (i) comply with any Elections made on or before the Election Date; or
 - (ii) procure that HoldCo issue any Scrip Consideration to any Scheme Shareholders;

- (b) each Scheme Shareholder who gives an Election on or before the Election Date will be entitled to receive the All Cash Consideration for the Scheme Shares they hold; and
- (c) Bidder must, instead of complying with clauses 5.2(b), and 5.2(c)(ii), by no later than 12pm on the Implementation Date, pay or procure the payment of, to a trust account operated by or on behalf of Target, to be held on trust for Scheme Shareholders, an amount in cleared funds equal to the Maximum Cash Consideration and will, by doing so, satisfy its obligations under clauses 5.2(b) and 5.2(c)(ii).

5.4 Election mechanism

- (a) Each Target Shareholder (other than Excluded Shareholders and Ineligible Foreign Shareholders) will be entitled to make an Election. All Elections take effect in accordance with this Scheme to the extent any Target Shareholder (other than Excluded Shareholders and Ineligible Foreign Shareholders) who makes an Election qualifies as a Scheme Shareholder.
- (b) Target must ensure that the Scheme Booklet is accompanied by an Election Form.
- (c) The Election Form must state to the effect that:
 - (i) subject to clause 5.4(c)(iv), an Election must be made in accordance with the terms and conditions stated on the Election Form for it to be valid and must be completed and returned in writing to the address specified on the Election Form on or before the Election Date (provided that Bidder may, with the agreement of Target in writing, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on Bidder, Target and the relevant Target Shareholder, with Bidder having no obligation to communicate with any Target Shareholder prior to making this determination);
 - (ii) an Election will apply to all of the Target Shares of the Target Shareholder (other than an Excluded Shareholder) as at the Election Date;
 - (iii) once made, an Election may be varied, waived or revoked before the Election Date by notice in writing to Target; and
 - (iv) in the manner considered appropriate by Bidder and Target (acting reasonably), a Target Shareholder (other than an Excluded Shareholder) who holds one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections in relation to each of those parcels of Target Shares (subject to providing to Bidder and the Target any substantiating information they reasonably require). If a Target Shareholder (other than an Excluded Shareholder) does so, it will be treated as a separate Target Shareholder for each such parcel in respect of which a separate Election is made (and for any balance of its holding), provided that if, at the Election Date, it holds fewer Target Shares than it held at the time it made the Election, then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to, any such separate Election (and if so, which separate Election the Target Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares or otherwise be treated in any other manner that Bidder and Target agree is fair and appropriate.

- (d) Target must ensure that, to the extent reasonably practicable, persons who acquire Target Shares after the date of the dispatch of the Scheme Booklet and up until the Election Date are sent Election Forms upon those persons requesting one from the Target.
- (e) In order to facilitate the issue of the Scrip Consideration (if applicable), Target must provide, or procure the provision, to Bidder:
 - (i) reasonable written updates of the Elections that have been received from Target Shareholders up to the Election Date; and
 - (ii) written details of any final Elections made by a Target Shareholder, on the Business Day after the Election Date, including the name and address of each Target Shareholder (other than an Excluded Shareholder) who has made an Election on or before the Election Date and the number of HoldCo Shares that HoldCo must issue to that Target Shareholder to meet its obligations under the Scheme in accordance with that Target Shareholder's Election and subject to the Scaleback Mechanism.
- (b) The parties agree that the terms and conditions that will be stated on the Election Form will include the following:
 - (i) Ineligible Foreign Shareholders may not make an Election and that any purported Election by such persons will be of no effect. Clause 5.8 will apply to any Target Shareholder who makes an Election but who qualifies as an Ineligible Foreign Shareholder;
 - (ii) Excluded Shareholders may not make an Election and that any purported Election by such persons will be of no effect;
 - (iii) if a Target Shareholder does not make a valid Election on or before the Election Date, that Target Shareholder will receive All Cash Consideration in respect of the Scheme Shares held by that Target Shareholder;
 - (iv) Target Shareholders (other than Excluded Shareholders) who make a valid Election on or before the Election Date agree to become members of HoldCo from the Implementation Date and become bound by the HoldCo Constitution and HoldCo SHD from the Implementation Date, pursuant to this Scheme;
 - (v) Target Shareholders (other than Excluded Shareholders) who make an Election on or before the Election Date agree that their Scrip Consideration will be issued to that Scheme Shareholder (either directly or indirectly through the Custodian to be held as bare trustee for those Scheme Shareholders, at the absolute discretion of Bidder), pursuant to and in accordance with the terms of the HoldCo SHD;
 - (vi) Target Shareholders (other than Excluded Shareholders) who make a valid Election on or before the Election Date must provide, before the Election Date, the information and documents described in the Election Form as being required by Bidder or Target; and
 - (i) if the Aggregate Scrip Consideration is less than the Minimum Scrip Threshold, Target Shareholders (other than Excluded Shareholders) who make valid Elections on or before the Election Date will receive the All Cash Consideration in respect of the Scheme Shares held by that Target Shareholder (other than an Excluded Shareholder),

and such other terms and conditions as Bidder reasonably requires to be stated on the Election Form.

5.5 All Cash Consideration

- (a) If a Target Shareholder:
- (i) is an Ineligible Foreign Shareholder; or
 - (ii) does not make a valid Election on or before the Election Date,
- that Target Shareholder (other than an Excluded Shareholder) will receive the All Cash Consideration for the Scheme Shares held by them.
- (b) All Target Shareholders (other than Excluded Shareholders) will receive the All Cash Consideration for the Scheme Shares held by them if the provisions of clause 5.3 apply.
- (c) If a calculation of Scheme Consideration would result in a Scheme Shareholder becoming entitled to a fraction of a cent:
- (i) where the entitlement is to half a cent or more, the fractional entitlement will be rounded up to the nearest whole cent; and
 - (ii) where the entitlement is to less than half a cent, the fractional entitlement will be rounded down to the nearest whole cent.

5.6 Scrip Consideration

If a Target Shareholder (other than an Excluded Shareholder) makes a valid Election on or before the Election Date and clause 5.3 does not apply:

- (a) the Target Shareholder (other than an Excluded Shareholder) will be entitled to receive the Scheme Consideration relevant to their Election (subject to the Scaleback Mechanism and the terms of this Scheme);
- (b) if the number of HoldCo Shares to which that Target Shareholder (other than an Excluded Shareholder) is entitled is not a whole number:
- (i) where the entitlement is to half a HoldCo Share or more, the number of HoldCo Shares will be rounded up to the nearest whole number; and
 - (ii) where the entitlement is to less than half a HoldCo Share, the number of HoldCo Shares will be rounded down to the nearest whole number; and
- (c) the Scrip Consideration in respect of which the Target Shareholder (other than an Excluded Shareholder) is entitled to will be issued directly to that Scheme Shareholder (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration) or the Custodian to be held as bare trustee for that Scheme Shareholder (at the absolute discretion of Bidder) (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration), pursuant to and in accordance with the terms of the HoldCo SHD.

5.7 Share splitting

If Bidder and Target are of the opinion that a number of Scheme Shareholders and/or other persons (who, to avoid doubt, may include other Scheme Shareholders) have, on or before the Election Date, been party to a shareholding splitting or division or an acquisition of Scheme Shares in an attempt to obtain, or which provides, an advantage by reference to

the rounding as contemplated by clause 5.6(b)(i), Bidder may give notice to those Scheme Shareholders prior to the Implementation Date:

- (a) setting out the names and Registered Address of all of those Scheme Shareholders;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

5.8 Ineligible Foreign Shareholders

Bidder has no obligation to provide, and will not provide, under the Scheme any Scrip Consideration to Ineligible Foreign Shareholders, regardless of any Election made by those persons, but must pay the All Cash Consideration to each Ineligible Foreign Shareholder for the Scheme Shares they hold in accordance with the Scheme.

5.9 Scaleback Mechanism

If:

- (a) the:
 - (i) Scheme Shareholder is not an Ineligible Foreign Shareholder and has made a valid Election on or before the Election Date; and
 - (ii) Aggregate Scrip Consideration exceeds the Maximum Scrip Threshold,

then:

- (b) that Scheme Shareholder is entitled to receive:
 - (i) Scrip Consideration as calculated in accordance with the following formula:

$$A = (B \times \text{Scrip Consideration}) \times \left(\frac{C}{D} \right)$$

where:

A = the number of HoldCo Shares to be received by the Scheme Shareholder pursuant to this Scheme;

B = if the Scheme Shareholder:

- (i) has made a Mixed Election Option 1, a number equal to 25% of the Scheme Shares held by the Scheme Shareholder;
- (ii) has made a Mixed Election Option 2, a number equal to 50% of the Scheme Shares held by the Scheme Shareholder;
- (iii) has made a Mixed Election Option 3, a number equal to 75% of the Scheme Shares held by the Scheme Shareholder;

(iv) has made an All Scrip Election Option, a number equal to 100% of the Scheme Shares held by the Scheme Shareholder; or

(v) has made a Custom Consideration Election Option, a number equal to the percentage of that Scheme Shareholder's Scheme Shares in respect of which that Scheme Shareholder will receive Scrip Consideration;

C = the number of HoldCo Shares equal to the Maximum Scrip Threshold; and

D = the Aggregate Scrip Consideration,

plus:

- (ii) the All Cash Consideration for:
 - A. each Scheme Share they hold; *less*
 - B. the number of Scheme Shares held by the Scheme Shareholder in respect of which the Scheme Shareholder will receive Scrip Consideration as calculated in accordance with clause 5.9(b)(i).

6. Provision of Scheme Consideration

6.1 Provision of Aggregate Cash Consideration

- (a) The obligation of Bidder to provide, or procure the provision of, the Aggregate Cash Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll will be satisfied by Bidder by:
 - (i) depositing, or procuring the deposit, into the Trust Account, of an amount in cleared funds equal to the Aggregate Cash Consideration by no later than 12pm on the Implementation Date to be held by or on behalf of Target on trust for the Scheme Shareholders (provided that any interest on the amount so deposited, less bank fees and other charges, will accrue for the benefit of Bidder); and
 - (ii) providing Target with written confirmation that payment has been made in accordance with clause 6.1(a)(i) above.
- (b) Subject to Bidder complying with its obligations under clause 6.1(a), Target must on the Implementation Date pay, or procure the payment, from the Trust Account to each Scheme Shareholder an amount equal to the Cash Consideration in respect of each Scheme Share held by that Scheme Shareholder as set out in the Target Share Register on the Scheme Record Date.
- (c) Target's obligations under clause 6.1(b) will be satisfied by Target (in its absolute discretion, and despite any election referred to in clause 6.1(c)(i) or authority referred to in 6.1(c)(ii) made or given by the Scheme Shareholder):
 - (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Target Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount to that Scheme Shareholder in Australian currency by electronic means in accordance with that election;

- (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Target; or
- (iii) dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to that Scheme Shareholder by prepaid post to the Registered Address of that Scheme Shareholder (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.3).

6.2 Provision of Aggregate Scrip Consideration

- (a) Subject to clauses 5.3, 5.4, 5.7, 5.8 and 6.2(b) and the Scaleback Mechanism, before 12pm (or such other time as Bidder and Target agree in writing) on the Implementation Date, HoldCo must:
 - (i) issue the Scrip Consideration to each Scheme Shareholder who has made a valid Election, or is otherwise deemed to have validly elected, to receive Scrip Consideration in accordance with the Scheme in respect of that Scheme Shareholder's Scheme Shares; and
 - (ii) procure that the name and address of each such Scheme Shareholder is entered into the HoldCo Register in respect of the Scrip Consideration to which it is entitled under the Scheme (either directly or indirectly through the Custodian to hold as bare trustee for the relevant Scheme Shareholders pursuant to and in accordance with the terms of this Scheme and the HoldCo SHD).
- (b) Notwithstanding any other provision of this Scheme, the Scrip Consideration in respect of which a Scheme Shareholder is entitled under clause 5.6(a) may, in Bidder's absolute discretion, be issued to:
 - (i) that Scheme Shareholder directly (such that the Scheme Shareholder will be the legal holder of the relevant Scrip Consideration); or
 - (ii) indirectly through the Custodian to hold as bare trustee for that Scheme Shareholder (such that the Scheme Shareholder will be the beneficial holder but not the legal holder of the relevant Scrip Consideration), pursuant to and in accordance with the terms of the HoldCo SHD.
- (c) Within 5 Business Days after the Implementation Date, HoldCo must send, or procure the sending of, a certificate or other holding statement to each Scheme Shareholder and/or the Custodian (if applicable) who received Scrip Consideration under this Scheme, reflecting the issue of such Scrip Consideration, to their Registered Address or as otherwise validly directed by the relevant Scheme Shareholder or the Custodian (as applicable).

6.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 6.3(c), any Scheme Consideration payable in cash in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders (unless the joint holders have nominated a bank account under clause 6.1(c)(ii), in which case

the amount must be deposited directly to the nominated bank account of the joint holders);

- (b) any Scrip Consideration to be issued under this Scheme must be issued to and registered in the names of the joint holders or, if Scrip Consideration is issued to the Custodian to hold as bare trustee for the joint holders (as contemplated by clause 6.2(b)), the joint holders will have joint beneficial ownership of that Scrip Consideration; and
- (c) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target (or, in the case of clause 6.2(c), Bidder), the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders.

6.4 Unclaimed monies

- (a) Target may cancel a cheque issued under clause 6.1(c)(iii) if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Target Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 6.4(a) must be reissued.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of *Unclaimed Money Act 1995* (NSW)).

6.5 Treatment of surplus amounts

To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account, that surplus may, at the election of Bidder, either remain with Target or be paid by Target as trustee for the Scheme Shareholders to Bidder following the satisfaction of Target's obligation as the trustee for the Scheme Shareholders under this clause 6.

6.6 Amounts to be withheld or retained

- (a) If written notice is given to Target (or the Target Registry) or Bidder of an order or direction made by a court of competent jurisdiction or another Government Agency that:
 - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which amount would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 6, then Target will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
 - (ii) prevents Target from providing consideration to any particular Scheme Shareholder in accordance with clause 6, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target will be entitled to (as applicable) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme

Shareholder multiplied by the Cash Consideration until such time as provision of the Scheme Consideration in accordance with this clause 6 is permitted by that (or another) order or direction or otherwise by law.

- (b) To the extent that amounts are so deducted or withheld in accordance with clause 6.6(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

7. Dealings in Target Shares

7.1 Determination of Scheme Shareholders

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

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

and for the purpose of establishing the persons who are Scheme Shareholders, Target will not accept for registration nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title) any transfer or transmission application or other request received after the Scheme Record Date or received prior to the Scheme Record Date but not in registrable or actionable form (as appropriate).

7.2 Target Share Register

- (a) For the purposes of determining entitlements to the Scheme Consideration, Target must maintain the Target Share Register in accordance with the provisions of this clause 7.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) Target must register, or cause to be registered, valid registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 7.1(b) by no later than the Scheme Record Date (provided that for the avoidance of doubt nothing in this clause 7.2(b) requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a Marketable Parcel).
- (c) Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Shares received after the Scheme Record Date, other than to Bidder in accordance with this Scheme.
- (d) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target shall be entitled to disregard any such disposal, purported disposal, agreement or other dealing.

7.3 Information made available to Bidder

As soon as practicable after the Scheme Record Date and in any event at least 3 Business Days before the Implementation Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

7.4 Effect of share certificates and holding statements

- (a) Each entry which is current on the Target Share Register as at the Scheme Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (b) All certificates and statements of holding for Target Shares (other than statements of holding in favour of Bidder and its successors in title) will cease to have effect after the Scheme Record Date as documents of title (or evidence thereof) in respect of those shares and, as from that date, each entry current at that date on the Target Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.

8. Quotation of Target Shares

8.1 Suspension of trading

Subject to the Scheme becoming Effective, Target will apply to the ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date.

8.2 Removal of Target from official list of ASX

On the Business Day immediately following the Implementation Date, Target will apply:

- (a) for termination of the official quotation of Target Shares on the ASX; and
- (b) to have itself removed from the official list of ASX.

9. General Scheme provisions

9.1 Consent to amendments to this Scheme

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

- (a) Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented in writing; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target, by its counsel or solicitors, has consented to in accordance with clause 9.1(a).

9.2 Binding effect of this Scheme

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

9.3 Agreement of Scheme Shareholders

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, in accordance with terms of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of Bidder, destroy any share certificates or holding statements relating to their Scheme Shares;
- (d) to the extent they are to receive Scrip Consideration, agrees to become a member of HoldCo and to be bound by the terms of the HoldCo Constitution and HoldCo SHD as a 'Rollover Shareholder';
- (e) to the extent they are to receive Scrip Consideration and that Scrip Consideration is issued to the Custodian to hold as bare trustee for that Scheme Shareholder, agrees to be bound by the Custodian Deed (as defined in the HoldCo SHD);
- (f) who holds their Target Shares in a CHESS Holding agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (g) acknowledges and agrees that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting, those who did not vote at that Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target to the extent of any inconsistency;
- (h) irrevocably consents to Bidder and Target doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and
- (i) who is an Ineligible Foreign Shareholder agrees and acknowledges that the payment to it of an amount in accordance with clause 5.8 constitutes the satisfaction in full of its entitlement to the Scheme Consideration,

without the need for any further act by the Scheme Shareholder.

9.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to Target and Bidder on the Implementation Date, and appointed and authorised Target as its attorney and agent to warrant to Bidder on the Implementation Date that:
 - (i) all Scheme Shares held by that Scheme Shareholder, together all rights and entitlements attaching to those Scheme Shares, which are transferred to Bidder under this Scheme will, at the time of transfer to Bidder, be:
 - A. fully paid;
 - B. free from all Encumbrances and third party rights or interests of any kind; and
 - C. free from all restrictions on transfer of any kind;

- (ii) it has full power and capacity to sell and to transfer their Scheme Shares, together with all rights and entitlements attaching to their Scheme Shares, to Bidder; and
 - (iii) it has no existing right to be issued any Target Shares, Target Equity Incentive, or any other Target equity securities.
- (b) Target undertakes that it will provide the warranty in clause 9.4(a) to Bidder as agent and attorney for each Scheme Shareholder.

9.5 Authority given to Target

- (a) Upon this Scheme becoming Effective, each Scheme Shareholder without the need for any further act:
- (i) irrevocably appoints Target and each of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
 - A. enforcing the Deed Poll against Bidder and HoldCo;
 - B. doing and/or executing all acts, matters, things and documents necessary, desirable, incidental or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,

and Target accepts such appointment; and
 - (ii) will be deemed to have authorised Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary, desirable, incidental or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer as agent and attorney of each Scheme Shareholder.
- (b) Target as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 9.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

9.6 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to the Scheme Shareholders and until Target registers Bidder as the holder of all Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Bidder as its attorney and agent (and directed Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Target, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign or vote on any resolutions, whether in person, by proxy or by corporate representative, other than as pursuant to clause 9.4(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and

- (d) acknowledges and agrees that in exercising the powers referred to in clause 9.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 9.4(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

9.7 Title to Target Shares

Upon the Scheme Consideration being provided to the Scheme Shareholders and until Target registers Bidder as the holder of all Scheme Shares in the Target Share Register, Bidder will be beneficially entitled to all of the Scheme Shares.

10. General

10.1 Stamp duties

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of the transfer of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnifies each Scheme Shareholder against any liability from a failure to comply with clause 10.1(a).

10.2 Consent

Each of the Scheme Shareholders consents to Target doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Target or otherwise.

10.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the office of the Target Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Target Shareholder may not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

10.4 Further acts and documents

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

10.5 No liability when acting in good faith

Each Scheme Shareholders agrees that neither Target or Bidder, nor any of their respective directors, officers, secretaries, employees or Subsidiary, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

11. Governing law and jurisdiction

11.1 Governing law

This Scheme is governed by the law applying in New South Wales, Australia.

11.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of New South Wales, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 11.2(a).

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Attachment 3 - Deed Poll

For personal use only

Deed poll dated

By **Eternal Aus BidCo Pty Ltd ACN 669 053 258** of Level 38, South Tower, 80 Collins Street, Melbourne, Victoria 3000 (**Bidder**)

and

Eternal Aus HoldCo Ltd ACN 669 042 782 of Level 38, South Tower, 80 Collins Street, Melbourne, Victoria 3000 (**HoldCo**)

In favour of Each person registered as a holder of fully paid ordinary shares in the capital InvoCare Limited ACN 096 437 393 (**Target**) in the Target Share Register as at the Scheme Record Date, other than any Excluded Shareholder (**Scheme Shareholders**)

Background

- A. Target and Bidder have entered into the Implementation Deed, pursuant to which, amongst other things, Bidder:
 - (i) is to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder and acquire all Scheme Shares held by Scheme Shareholders under the Scheme; and
 - (ii) agreed to enter into this deed poll.
- B. Bidder and HoldCo are making this deed poll for the purposes of covenanting in favour of the Scheme Shareholders to perform the actions and obligations attributed to each of them under the Implementation Deed and the Scheme.

It is declared as follows

1. Definitions and interpretation

1.1 Definitions

Unless the context requires otherwise, in this deed poll:

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

Implementation Deed means the scheme implementation deed between Target and Bidder, dated 9 August 2023.

Scheme means the proposed members' scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Scheme Consideration, in substantially the same form as set out in Attachment 2 to the Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Target in writing.

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1.2 Terms defined in the Scheme

Capitalised words and phrases used but not defined in this deed poll have the meaning given to them in the Scheme, unless the context requires otherwise.

1.3 Interpretation

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme form part of this deed poll as if set out in full in this deed poll, except that references to "Scheme" in those clauses will be taken to be references to "deed poll".

1.4 Nature of this deed poll

Bidder and HoldCo acknowledge and agree 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 a party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and all of its directors, secretaries and officers (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and HoldCo.

2. Condition Precedent

2.1 Condition

This deed poll and the obligations of Bidder and HoldCo under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Bidder and HoldCo under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no further force or effect if:

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

unless Target, Bidder and HoldCo otherwise agree in writing (and, if required, as approved by the Court).

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition to and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder and HoldCo are released from their obligations to further perform this deed poll except those obligations under clause 7.6; and
- (b) each Scheme Shareholder retains the rights it has against Bidder and/or HoldCo in respect of any breach of this deed poll which occurs before it was terminated.

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3. Scheme Obligations

3.1 Undertaking to be bound by Implementation Deed

Subject to clause 2, Bidder covenants in favour of each Scheme Shareholder to observe and perform all obligations and actions attributed to it under the Implementation Deed, subject to and in accordance with the terms of the Implementation Deed.

3.2 Undertaking to provide Scheme Consideration

Subject to clause 2, each of the Bidder and HoldCo undertake in favour of each Scheme Shareholder to:

- (a) provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and
- (b) undertake or procure the undertaking of all other actions, and give each acknowledgement, representation and warranty (if any) attributed to either Bidder or HoldCo under the Scheme.

3.3 Status of HoldCo Shares

Bidder and HoldCo undertake in favour of each Scheme Shareholder that the HoldCo Shares which are issued to Scheme Shareholders in accordance with the Scheme will:

- (a) be duly issued, fully paid and free from any Encumbrances and any other third party rights and will have the rights attaching to them as set out in the HoldCo Constitution and HoldCo SHD; and
- (b) rank equally in all respects with each existing HoldCo Share (if any) of the same class then on issue.

4. Warranties

Each of Bidder and HoldCo represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) it has the legal right and full corporate power to execute, deliver and 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 constitutes (or will when executed constitute) valid legal and binding obligations on it and is enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with or result in a breach of or default under:
 - (i) its constitution or equivalent constituent documents; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which it is a party or by which it is bound.

5. Continuing obligations

This deed poll is irrevocable and subject to clause 2 remains in full force and effect, until the earlier of:

- (a) the time at which Bidder and HoldCo have fully performed their obligations under this deed poll; and
- (b) the termination of this deed poll under clause 2.

6. Notices

6.1 How notice to be given

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

- (a) must be given to a party:
 - (i) by hand delivery, courier service, prepaid express post or email; and
 - (ii) using the address or other details for the party set out in the below table (or as otherwise notified by that party to each other party from time to time under this clause 6):

Party name	Attention	Address	Email address
Target	Heidi Aldred, Company Secretary	Level 5, 40 Mount Street, North Sydney, NSW, 2060	heidi.aldred@invokecare.com.au
	With a copy to Clayton Utz: Rory Moriarty and Kimberley Grellinger	Level 15, 1 Bligh Street, Sydney NSW 2000	rmoriarty@claytonutz.com kgrellinger@claytonutz.com
Bidder	Nick Kay	Level 38, 80 Collins Street, Melbourne, VIC 3000	nkay@tpg.com
	With a copy to Gilbert + Tobin: Peter Cook, Alex Kauye and Sam Kings		pcook@gtlaw.com.au akauye@gtlaw.com.au skings@gtlaw.com.au
HoldCo	Nick Kay	Level 38, 80 Collins Street, Melbourne, VIC 3000	nkay@tpg.com
	With a copy to Gilbert + Tobin: Peter Cook, Alex Kauye and Sam Kings		pcook@gtlaw.com.au akauye@gtlaw.com.au skings@gtlaw.com.au

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending party or by a person duly authorised by the sending party;

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- (d) (in the case of email) must:
 - (i) state the name of the sending party or a person duly authorised by the sending party and state that the email is a communication under or in connection with this deed poll; and
 - (ii) if the email contains attachments, ensure the attachments are in PDF or other non-modifiable format the receiving party can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender.

6.2 When notice taken to be received

Without limiting the ability of a party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be given by the sender and received by the recipient:

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
- (d) (in the case of email, whether or not containing attachments) the earlier of:
 - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - (ii) receipt by the sender of an automated message confirming delivery; and
 - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
 - (i) the recipient is absent from the place at which the communication is delivered or sent;
 - (ii) the communication is returned unclaimed; and
 - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or

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public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

6.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 6 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 6.2.

7. General

7.1 Amendments

This deed poll may only be amended by another deed poll entered into by Bidder and HoldCo, and then only:

- (a) if before the First Court Date, if the amendment is agreed to by Target in writing; and
- (b) if on or after the First Court Date, if the amendment is agreed to by Target in writing and the Court indicates that the amendment would not preclude approval of the Scheme.

7.2 Assignment

- (a) The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, novated, transferred or otherwise dealt with without the prior written consent of the Bidder and HoldCo.
- (b) Any purported assignment, novation, transfer or other dealing in contravention of clause 7.2(a) of this deed poll is invalid.

7.3 Cumulative rights

The rights, powers and remedies of the Bidder, HoldCo and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

7.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed poll by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (b) A waiver or consent given by a party under this deed poll 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 a term of this deed poll operates as a waiver of another breach of that term or of a breach of any other term of this deed poll.

7.5 Joint and several obligations

Bidder and HoldCo are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

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7.6 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties on or in connection with the Scheme and this deed poll and the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme; and
- (b) indemnifies each Scheme Shareholder against any liability from a failure to comply with clause 7.6(a) of this deed poll.

7.7 Further assurances

Bidder and HoldCo must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

7.8 Counterparts

This deed poll maybe executed in counterparts, all of which taken together constitute one document.

8. Governing law and jurisdiction

8.1 Governing law

This deed poll is governed by the law applying in New South Wales, Australia.

8.2 Jurisdiction

Bidder and HoldCo irrevocably:

- (a) submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and
- (b) waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

Executed and delivered as a deed poll.

Executed by Eternal Aus BidCo Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of Nicholas James Kay who is the sole director and sole secretary of Eternal Aus BidCo Pty Ltd

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Executed by Eternal Aus HoldCo Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

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Attachment 4 - HoldCo SHD term sheet

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Project Eternal

HoldCo SHD term sheet



No.	Term	Description
Definitions, interpretation		
1.	Defined terms	<p>In this term sheet:</p> <p>BidCo means Eternal Aus BidCo (ACN 669 053 258), an indirect subsidiary of HoldCo and a proprietary company incorporated under the laws of Australia.</p> <p>Board means the board of directors of HoldCo from time to time.</p> <p>Blue Eternal means Blue Eternal Holdings Pte. Ltd. (UEN 202201522M).</p> <p>Class A Shareholder means a holder of Class A Shares.</p> <p>Class B Shareholder means a holder of Class B Shares.</p> <p>Class C Shareholder means a holder of Class C Shares.</p> <p>Class M Shareholder means a holder of Class M Shares.</p> <p>Class A Shares means a share in the capital of HoldCo which is designated as a Class A Share and has the rights set out in the Shareholders' Deed and the Constitution.</p> <p>Class B Shares means a share in the capital of HoldCo which is designated as a Class B Share and has the rights and obligations set out in the Shareholders' Deed and the Constitution.</p> <p>Class C Shares means a share in the capital of HoldCo which is designated as a Class C Share and has the rights and obligations set out in the Shareholders' Deed and the Constitution.</p> <p>Class M Shares has the meaning given in item 20.</p> <p>Constitution means the constitution of HoldCo.</p> <p>Corporations Act means the <i>Corporations Act 2001</i> (Cth).</p> <p>Exit means a sale of all or a majority of the Shares or of all or a majority of the Group's business or assets, or any IPO.</p> <p>Group means HoldCo and each of its Subsidiaries.</p> <p>HoldCo means Eternal Aus HoldCo Ltd (ACN 669 042 782), a public company limited by shares incorporated under the laws of Australia.</p> <p>InvoCare means InvoCare Limited (ACN 096 437 393), a public company incorporated under the laws of Australia whose shares are listed on the Australian Securities Exchange as of the date of the SID.</p> <p>IPO means an initial public offering of shares and listing on a recognised stock exchange.</p> <p>Management Equity Plan means the management equity plan to be established by HoldCo under which HoldCo may issue Class M Shares or other securities in HoldCo to officers, employees and advisers of the Group (and other persons as may be approved by the Board from time to time).</p> <p>Management Shareholder means a holder of Class M Shares.</p> <p>MOM means multiple of money calculated on a pre-tax and pre-cost basis and on the basis of the value of Class B Shares as implied by their issue price.</p> <p>Scheme means the scheme of arrangement pursuant to which BidCo acquires all of the</p>

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InvoCare shares which are not already held by Blue Eternal.

Shareholder means a holder of Class A Shares, Class B Shares, Class C Shares or Class M Shares (as the context requires).

Shareholders' Deed means the shareholders' deed in relation to HoldCo to be prepared based on this term sheet.

Shares means Class A Shares, Class B Shares, Class C Shares or Class M Shares (as the context requires).

SID means the scheme implementation deed between BidCo and InvoCare.

Simple Majority means directors that together hold more than 50% of the total voting rights of all directors who (i) attend the relevant Board meeting or sign the relevant written resolution (as the case may be), and (ii) are entitled to vote on the relevant resolution.

Subsidiary has the meaning given to it in the Corporations Act.

TPG Shareholders means:

- (a) Blue Eternal; and
- (b) any affiliate of Blue Eternal that holds Shares from time to time, in each case, for so long as such person holds Shares.

2. **Shareholders' Deed prevails** Where the Shareholders' Deed and the Constitution deal with the same or a similar topic differently:
- (a) the Shareholders' Deed will prevail in relation to that topic to the extent of the inconsistency; and
 - (b) if a Class A Shareholder gives HoldCo a notice specifying the difference and requesting any amendment to the Constitution that will remove the difference, each other Shareholder must take all necessary steps (as directed by the relevant Class A Shareholder) to amend the Constitution to make the Constitution consistent with the Shareholders' Deed.

Shares

3. **Classes, rights attaching** The share capital of HoldCo will initially be divided into the following classes of shares – Class A Shares, Class B Shares, Class C Shares and Class M Shares. Class A Shares, Class B Shares and Class C Shares will have the following rights:
- (a) one vote per Share (except for Class C Shares, which will not have voting rights);
 - (b) equal rights to dividends that the Board may declare; and
 - (c) equal rights on an insolvency event.
- Class M Shares are described in item 20 below.

4. **Class A Shares** Class A Shares will only be held by the TPG Shareholders (unless otherwise agreed by the TPG Shareholders).
- Class A Shares will be issued as fully paid and will rank equally with all other Class A Shares.
- Any Class B Share or Class C Share acquired by a Class A Shareholder will automatically be re-classified as a Class A Share.

5. **Class B Shares** Class B Shares will be offered to InvoCare shareholders as "Scrip Consideration" under the Scheme.
- Class B Shares will be issued as fully paid and will rank equally with all other Class B Shares.

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| 6. | Class C Shares | Class C Shares may be offered from time to time to management of the Group, employees of, or advisers to, affiliates of the TPG Shareholders and / or directors of HoldCo. Class C Shares will be issued as fully paid and will rank equally with all other Class C Shares. Class C Shares will not have voting rights. |
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Board matters

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| 7. | Board composition and voting | <p>The Board must consist of a minimum of 3 directors and a maximum of 10 directors, unless otherwise determined by a TPG Shareholder.</p> <p>The TPG Shareholders may appoint and remove all directors and may also appoint and remove the Chair of the Board, in both cases by written notice to HoldCo.</p> <p>The Chair will have a casting vote.</p> <p>A quorum for a Board meeting is 2 directors. No business may be transacted at any meeting unless a quorum is present at the commencement of the meeting.</p> |
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| 8. | Minimum board meetings | At least 4 Board meetings must be held per financial year (unless otherwise determined by the Board). |
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| 9. | Board decision-making | All decisions are to be made by a Simple Majority of the Board (each director having one vote). |
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| 10. | Board delegation and management | <p>The Board may delegate to senior management of the Group matters that are part of the day-to-day management of the Group on terms determined by the Board. The Board may, in its absolute discretion and from time to time, amend, revoke or replace any delegation made to senior management.</p> <p>Prior to implementation of the Scheme, the Board will approve HoldCo entering into a management services agreement with certain affiliates of the TPG Shareholders under which such affiliates will provide specialised and other transaction services to the Group. As is customary for management services agreements of this nature, in addition to reimbursement of costs for specialised operational services provided to the Group, an annual management fee and an exit fee may be payable by HoldCo (or a subsidiary thereof) as consideration for the services provided under the agreement.</p> <p>From time to time, affiliates of the TPG Shareholders may also provide other transaction related services to the Group on arm's length terms.</p> |
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Shareholder matters

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| 11. | Shareholders reserved matters | <p>Any approval of Class B Shareholders, Class C Shareholders and / or Class M Shareholders required under applicable law in relation to the following matters (or any other approval required under applicable law) may be given by HoldCo on behalf of Class B Shareholders, Class C Shareholders and / or Class M Shareholders (as applicable) in accordance with the power of attorney described in item 25 below:</p> <ul style="list-style-type: none">(a) winding-up of HoldCo;(b) adoption or amendment of the Constitution;(c) variation of rights in relation to a class of Shares (as applicable);(d) related party transactions; and(e) buy-back of Shares or capital reduction in relation to Shares. <p>If HoldCo is not permitted to rely on the power of attorney in item 25 below in relation to any of the above-mentioned matters, then such matters must be approved by the Class B Shareholders, Class C Shareholders and / or Class M Shareholders (as applicable) in accordance with applicable law (unless otherwise provided for in the Constitution).</p> |
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12. **Variation of class rights** The Constitution will provide that:
- (a) class rights may be varied by HoldCo giving notice to each affected Shareholder within 7 days of the variation; and
 - (b) each Shareholder is deemed to have consented to and approved any such variation of class rights,
- except where the variation prejudices the Class B Shareholders, Class C Shareholders and / or Class M Shareholders in a manner that is materially and adversely disproportionate as compared to the Class A Shareholders, in which case, the variation of class rights must be approved by Class B Shareholders, Class C Shareholders and / or Class M Shareholders holding more than 75% of the relevant class(es) of Shares (as applicable).

Dealing with Shares

13. **No obligation to provide further funding** No Shareholder is obliged to provide further funding to the Group (whether by way of debt or equity, guarantee or otherwise).

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14. **Issues of new shares** The Board may resolve to issue new Shares provided that those Shares are offered to all Class A Shareholders, Class B Shareholders and Class C Shareholders on a pro rata basis. Class M Shareholders will not be offered Shares under a pro rata issue.
- In the event that a Class B Shareholder or Class C Shareholder does not take up its pro rata entitlement within the relevant acceptance period specified in the Shareholders' Deed, the TPG Shareholders may elect to subscribe for the shortfall in which case those new Shares will be issued to the TPG Shareholders as Class A Shares. If the TPG Shareholders do not elect to subscribe for all of the shortfall Shares, the remaining Shares may be issued to a third party investor approved by the Board.
- Notwithstanding the foregoing, HoldCo will not need to follow the pro rata regime described above in the following circumstances:
- (a) issue of Shares as part of emergency funding provided by a Class A Shareholder or any of its affiliates (provided that the emergency funding is followed by an ability for Shareholders to subscribe for Shares to retain their relevant proportion);
 - (b) issue of Class A Shares to a Class A Shareholder to provide funding to meet transaction costs in connection with the Scheme or to finance payment of cash consideration under the Scheme or to repay debts of the Group in place prior to implementation of the Scheme;
 - (c) issue of Class B Shares in connection with the "Scrip Consideration" under the Scheme;
 - (d) issue of Class M Shares in connection with the Management Equity Plan (including on exercise of any options) and / or any issue of Class C Shares as contemplated in item 6;
 - (e) issue of Shares in connection with any dividend reinvestment plan;
 - (f) issue of Shares as consideration for, or to raise funding for, a bona fide, arm's length acquisition or merger, including by way of creating a new class of Shares;
 - (g) issue of Shares to a strategic partner provided that the Class A Shareholders, Class B Shareholders and Class C Shareholders are diluted proportionally and, post-issuance, the TPG Shareholders continue to hold at least 50.01% of the Shares outstanding and on issue; or
 - (h) issue of Shares in connection with an IPO (including a "pre-IPO" round issue of Shares).

There will be no requirement to offer Shares where the offer would require a prospectus or other disclosure document.

15. Disposal and encumbrances	No disposal of Shares is permitted by a Shareholder (other than a TPG Shareholder) except:
	<ul style="list-style-type: none"> (a) with the prior written consent of a TPG Shareholder; (b) pursuant to a drag-along notice under item 16 or the tag-along rights under item 17; or (c) pursuant to a compulsory transfer / selective buyback under the “Small Holdings” mechanism in item 19.
16. Drag-along rights	Subject to item 18, if a TPG Shareholder proposes to transfer all or a proportion of its Shares (including by way of IPO), no Shareholder will have any rights of pre-emption and the TPG Shareholder may give a drag-along notice to some or all of the other Shareholders requiring that they also transfer not less than an equivalent proportion of their Shares on terms and conditions that are not materially less favourable on an overall basis. If required by the relevant TPG Shareholder, the Class B Shareholders, Class C Shareholders and Class M Shareholders must provide all necessary consents and approvals to convert their Class B Shares, Class C Shares and Class M Shares (as applicable) into Class A Shares as part of the drag-along transaction.
17. Tag-along rights	Subject to item 18, if the TPG Shareholders propose to transfer all of their Shares as part of a trade sale and do not give a drag-along notice, the Class B Shareholders and Class C Shareholders must be invited to transfer all of their Shares on terms and conditions that are not materially less favourable on an overall basis. If required by the TPG Shareholders, the Class B Shareholders and Class C Shareholders exercising their tag-along rights must provide all necessary consents and approvals to convert their Class B Shares and Class C Shares (as applicable) into Class A Shares as part of the tag-along transaction.
18. Exit facilitation	<p>The TPG Shareholders may commence (or direct a Group company to commence) an Exit process at any time in their absolute discretion.</p> <p>Where the TPG Shareholders commence (or direct a Group company to commence) an Exit process, the other Shareholders must execute all documents and take all actions necessary or reasonably requested by the TPG Shareholders to facilitate the Exit on terms acceptable to the TPG Shareholders, including agreeing to escrow restrictions recommended by the underwriters or managers of an IPO (if applicable).</p> <p>The TPG Shareholders may require other Shareholders to rollover a portion of their Shares, or reinvest a portion of their proceeds, in connection with any IPO or (in respect of Class C Shareholders only) any trade sale, with the relevant portion to be determined by the TPG Shareholders having regard to factors including the advice of the underwriters, managers or advisers (as applicable).</p> <p>In the context of an IPO, the TPG Shareholders will determine the extent to which other Shareholders may sell Shares as part of the IPO having regard to the same factors as referred to in the preceding paragraph.</p>
19. Small Holdings	<p>After a standstill period of 1 year following implementation of the Scheme, with respect to Small Holdings (as defined below), HoldCo may issue a notice to Class B Shareholders or Class C Shareholders with Small Holdings:</p> <ul style="list-style-type: none"> (a) requesting the compulsory transfer of those Class B Shares or Class C Shares (as applicable) to one or more Class A Shareholders; or (b) that HoldCo is conducting a selective share buy-back in relation to all Small Holdings, <p>in which case all Shareholders (other than TPG Shareholders) must take any action and sign any document as may be required to give effect to the compulsory transfer or the selective share buy-back (as applicable) at the same valuation as implied by the</p>

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Scheme.

A **Small Holding** is a shareholding in HoldCo valued at less than \$10,000 (based on the value implied by the Scheme).

Management Shareholders

20. **Management Equity Plan** HoldCo may invite eligible persons to participate in the Management Equity Plan from time to time.
- Participants in the Management Equity Plan will be issued **Class M Shares** – being securities issued by HoldCo designated as Class M Shares. Class M Shares will not have voting or dividend rights (except to the extent expressly provided in the Constitution).

Other provisions

21. **Dividend policy** Subject to applicable law and the restrictions set out in any finance documents, dividends will be payable as determined at the sole discretion of the Board from time to time.
22. **Information** Class B Shareholders and Class C Shareholders will have information rights in respect of the books and records of HoldCo consistent with those provided to shareholders of unlisted public companies under the Corporations Act.
23. **Bare trust** The Shareholders' Deed will contain provisions to facilitate the appointment of an independent third party trustee as nominee to hold the Class B Shares, Class C Shares and / or Class M Shares on bare trust for the relevant Shareholders.
- The restrictions on dealing in the Shareholders' Deed will apply to dealings in a Shareholder's beneficial interest in Shares and any dealings in the legal title to Shares by the trustee.

General

24. **Confidentiality** Customary confidentiality provisions.
25. **Power of attorney** The Shareholders' Deed will include a power of attorney granted to HoldCo under which each Shareholder (other than the TPG Shareholders) appoints HoldCo as its attorney to take all necessary actions (including voting and / or signing documents) to approve resolutions on behalf of the Shareholder, including, without limitation, in respect of matters requiring the Shareholder's approval in accordance with applicable law, except where approval of the resolution would prejudice a Shareholder in a manner that is materially and adversely disproportionate as compared to the Class A Shareholders. The Shareholders' Deed will state that each Shareholder is deemed to have consented to and approved such resolutions.
- The power of attorney granted to HoldCo by each Shareholder (other than the TPG Shareholders) will also allow HoldCo to take necessary actions where such Shareholder has defaulted in its obligations under the Shareholders' Deed.
26. **Amendment or variation** For so long as the TPG Shareholders are Class A Shareholders, the Class A Shareholders may amend the Shareholders' Deed in their absolute discretion, except where the amendment prejudices a class of Shareholders in a manner that is materially and adversely disproportionate as compared to the Class A Shareholders, in which case, the consent of the affected Shareholders holding more than 75% of the relevant class of Shares is required for the amendment.
- Subject to the forgoing, each party to the Shareholders' Deed is bound by any amendment of the Shareholders' Deed made pursuant to this provision and notified to that party.

27. **Governing law** Governed by the laws of New South Wales. Parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

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