ASX ANNOUNCEMENT

22 September 2023

COSTA ENTERS INTO SCHEME IMPLEMENTATION AGREEMENT WITH A CONSORTIUM LED BY PAINE SCHWARTZ PARTNERS

Costa Group Holdings Limited (ASX: CGC) ("Costa" or the "Company") today announces that it has entered into a Scheme Implementation Agreement ("SIA") with a consortium led by Paine Schwartz Partners, LLC ("PSP") ("Consortium") for the acquisition of all of the issued shares in Costa the Consortium does not already own, by way of scheme of arrangement ("Scheme"), representing a value of $3.20 cash per share[1].

The PSP-led consortium is comprised of entities controlled by PSP, Driscoll's Inc and British Columbia Investment Management Corporation. Entities affiliated with PSP and Driscoll's Inc hold in aggregate, approximately 19.62% of the Costa shares currently on issue.

Highlights

- Under the terms of the Scheme, Costa shareholders will be entitled to receive cash consideration of $3.20 per share[1] ("Scheme Consideration").
- The Board of Costa unanimously considers the Scheme to be in the best interests of Costa Shareholders and recommends shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding and continuing to conclude that the Scheme is in the best interests of Costa shareholders.
- The Scheme is subject to certain conditions, including approval by Costa shareholders at a Scheme Meeting and certain regulatory approvals.
- Subject to satisfaction of the conditions, implementation of the Scheme is expected to occur in the first quarter of 2024.

Details of the Scheme Consideration

If the Scheme is implemented, Costa shareholders will be entitled to receive Scheme Consideration of $3.20 per share[1].

The Scheme Consideration values Costa's equity at approximately $1,496 million[2], and an enterprise value of approximately $2,459 million[3], and represents premia of:

- 43% to the closing share price on 25 October 2022 of $2.23, which represents the last close prior to PSP acquiring a 13.78% relevant interest in Costa;
- 23% to the price of $2.60, the price at which PSP acquired a 13.78% relevant interest in Costa on 25 October 2022;

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[1] Less any permitted dividend of up to $0.04 per Costa share declared and paid to Costa shareholders prior to the implementation of the Scheme

[2] Calculated based on 464,709,793 fully paid ordinary shares and 2,635,206 options or rights to subscribe for Costa shares currently on issue

[3] Calculated based on 2 July 2023 net debt of $350.1 million, lease liabilities of $582.9 million, equity accounted investments of $34.8 million and non-controlling interests of $65.5 million

- 18% to the closing share price on 30 June 2023[4] of $2.72; and
- 25% to the 3-month VWAP[5] to the closing share price on 30 June 2023 of $2.57.

Costa directors unanimously recommend the Scheme

Costa's Board of Directors unanimously considers the Scheme to be in the best interests of Costa Shareholders and recommends that Costa shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Costa shareholders. Each Costa Director intends to vote all of the Costa shares that he or she holds or controls in favour of the Scheme, subject to those same qualifications.

Costa Chairman, Neil Chatfield, said:

"The Board is committed at all times to acting in the best interests of shareholders and with this firmly in mind, carefully considered a range of factors in arriving at its recommendation. This included a number of different valuation scenarios, potential risks relating to the future execution of Costa's business growth plan, and the price at which Costa shares could trade over the medium to longer term if it continues as an independent listed company.

Accordingly, the Costa Board has unanimously recommended that Costa shareholders vote in favour of the Scheme, subject to the various customary conditions.

The Scheme Consideration represents a premium of 43% to the closing share price on 25 October 2022 of $2.23, being the last close prior to PSP acquiring a 13.78% interest in Costa. While the Costa Board has confidence in the long term fundamentals of the company, the Scheme provides certainty for shareholders in an uncertain operating environment by delivering cash proceeds to shareholders at an attractive premium."

Details of the Scheme Implementation Agreement

The implementation of the Scheme is subject to various customary conditions. A copy of the SIA, which sets out the terms and conditions of the Scheme and associated matters, is attached to this announcement. Capitalised terms used in this section below have the meaning given to those terms in the SIA.

In summary, conditions for implementation of the Scheme include:

- the independent expert issuing an independent expert's report which concludes that the Scheme is in the best interests of Costa shareholders (and not changing or withdrawing that conclusion);
- approval of the Foreign Investment Review Board for the Consortium acquiring all of the shares in Costa, noting PSP have already received approval to acquire up to 100% of the shares in Costa;
- approval from the Chinese State Administration for Market Regulation, the Moroccan Competition Council, and the European Commission;

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[4] Being the closing price on the day immediately prior to market speculation around a possible change of control proposal
[5] Volume weighted average price

- approval of Costa shareholders by the requisite majorities and the Federal Court of Australia;
- no Material Adverse Effect to Costa including a reduction in consolidated net assets or consolidated annual EBITDA-S beyond specified thresholds;
- no Costa Prescribed Events; and
- certain other customary conditions.

The Scheme is not subject to any financing condition.

The SIA contains limited termination rights including that either party may terminate in the event of an unremedied material breach by the other party.

Under the SIA, Costa will be subject to customary exclusivity obligations, including no shop, no talk and no due diligence obligations (the latter two subject to a customary fiduciary exception), notification obligations and a matching right. A break fee of $14.9 million will be payable by Costa to the Consortium and a reverse break fee of $14.9 million will be payable by the Consortium to Costa, in each case, in certain customary circumstances.

Indicative timetable and next steps

Costa shareholders do not need to take any action at this point in time.

A Scheme Booklet containing information relating to the proposed acquisition under the Scheme, reasons for the Costa directors' recommendation, an independent expert's report, and details of the Scheme meeting will be prepared and provided to the Australian Securities and Investments Commission for review, and subsequently sent to Costa shareholders.

Shareholders will then have the opportunity to vote on the Scheme at a shareholder meeting. Subject to shareholder approval being obtained by the requisite majorities and the other conditions of the Scheme being satisfied, implementation of the Scheme is expected to occur in the first quarter of 2024.

Additional information

Costa has appointed UBS Securities Australia as financial adviser and King & Wood Mallesons as legal adviser.

This release is authorised by the Costa Group Holdings Limited Board.

About Costa (ASX:CGC) - *Costa is Australia's leading grower, packer and marketer of fresh fruit & vegetables and operates principally in five core categories: berries, mushrooms, glasshouse tomatoes, citrus and avocados. Operations include approximately +7,200 planted hectares of farmland, 40 hectares of glasshouse facilities and three mushroom growing facilities across Australia. Costa also has strategic foreign interests, with majority owned joint ventures covering six blueberry farms in Morocco and four berry farms in China, covering approximately 750 planted hectares.*

For further information contact: Michael Toby – Corporate Affairs Manager T: +613 8363 9071

KING & WOOD MALLESONS
金杜律师事务所

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Scheme Implementation Agreement

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Scheme Implementation Agreement

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Scheme Implementation Agreement

Details

Parties		
Bidder	Name	**Chilli Buyer Pty Ltd**
	ACN	[illegible]
	Address	c/- Deutsche Bank Place [illegible] Phillip Street [illegible] New South Wales [illegible]
	Email	[redacted]
	Contacts	[redacted]
	Attention	[redacted]
Costa	Name	**Costa Group Holdings Limited**
	ACN	[illegible]
	Address	[illegible] Street Docklands Victoria [illegible]
	Email	[redacted]
	Contacts	[redacted]
	Attention	[redacted]
Governing law	New South Wales, Australia	
Recitals	**A**	The parties agree that Bidder will acquire all of the Ordinary Shares in Costa (other than the Ordinary Shares held by the Excluded Shareholders) by means of a members' scheme of arrangement under Part [illegible] of the Corporations Act.
	B	At the request of Bidder, Costa intends to propose the Scheme and issue the Scheme Booklet.
	C	Costa and Bidder have agreed to implement the Scheme on the terms and conditions of this document.

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ACCC means the Australian Competition and Consumer Commission.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

ASX means ASX Limited or the market operated by it, as the context requires.

ATO means the Australian Taxation Office.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Bidder Group means Bidder and its Related Bodies Corporate.

Bidder Indemnified Parties means Bidder, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Bidder Information means the information regarding Bidder as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. Bidder Information does not include information about the Costa Group (except to the extent it relates to any statement of intention in relation to the Costa Group following the Effective Date).

Bidder Warranties means the representations and warranties of Bidder set out in clause [illegible].

Break Fee means [illegible].

Business Day means a day that is each of the following:

(a) a Business Day as defined in the Listing Rules;

(b) a day that banks are open for business in New York, United States; and

(c) a day that banks are open for business in Victoria, British Columbia, Canada,

provided that any reference to a Business Day in relation to (or in the context of) any date referenced in the Timetable (other than in respect of the Implementation Date), will have the meaning given in (a) of this definition.

Competing Transaction means any expression of interest, proposal or offer (including a non-binding or indicative offer or proposal), transaction, agreement or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise, which, if completed substantially in accordance with its terms, would mean a person (other than Bidder or its Related Bodies Corporate, whether alone or together with its Associates) would:

(a) directly or indirectly acquire or have the right to acquire (other than as custodian, nominee or bare trustee):

(i) an interest or Relevant Interest in; or

(ii) a legal, beneficial or economic interest (including by way of equity swap, contract for difference or similar transaction or arrangement) in,

[illegible] or more of Costa Shares;

(b) acquire control of Costa within the meaning of section 50AA of the Corporations Act (but disregarding subsection 50AA(4));

(c) directly or indirectly acquire or become the holder of, or obtain a right to acquire, or otherwise obtain a legal, beneficial or economic interest in, or control of, all or a substantial part or a material part of Costa's business or assets or the assets of any business conducted by the Costa Group;

(d) otherwise directly or indirectly acquire, be stapled with, merge or amalgamate with, or acquire a controlling shareholding or economic interest in Costa or any of its Related Bodies Corporate; or

(e) require Costa to abandon or otherwise fail to proceed with the transactions contemplated by this document,

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.

Conditions Precedent means the conditions precedent set out in clause [illegible].

Confidentiality Deed means the Paine Schwartz Confidentiality Deed and includes any separate undertakings and information exchange protocols entered into by any Consortium Member or their external advisers in connection with Costa providing consent for information disclosure thereunder.

Consortium Member means:

(a) Driscoll's, Inc.;

(b) [illegible]are[illegible]e IRR LP by its general partner [illegible]are[illegible]e IRR GP Inc.; and

(c) PSP Chill Holdings GP LLC as general partner of PSP Chill Holdings LP.

Controller has the meaning it has in the Corporations Act.

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

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

Costa Board means the board of directors of Costa.

Costa Group means Costa, its Subsidiaries and each of the following entities:

(a) Costa China (Hong Kong) Limited;

(b) African Blue (SA);

(c) the Driscoll's Australia Partnership formed under the partnership deed dated [illegible] March [illegible];

(d) Driscoll's Australia Pty Ltd (ACN [illegible]); and

(e) Polar Fresh Cold Chain Services Pty Ltd (ACN [illegible]),

and their respective Subsidiaries.

Costa Indemnified Parties means Costa, its officers, employees and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Costa Information means all information contained in the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

Costa Joint Venture Entity means each entity set out in [illegible] of the definition of Costa Group.

Costa JVE Member means the member (or members in aggregate) of the Costa Group who directly hold an interest in a Costa Joint Venture Entity.

Costa Prescribed Event means, except to the extent contemplated by this document or the Scheme or otherwise approved in writing by Bidder, any of the following events:

(a) **(conversion)** Costa or another member of the Costa Group converts all or any of its shares into a larger or smaller number of shares;

(b) **(reduction of share capital)** Costa or another member of the Costa Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;

(c) **(buy-back)** Costa or another member of the Costa Group:

(i) enters into a buy-back agreement; or

(ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

(d) **(distribution)** Costa or another member of the Costa Group makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) except for a Permitted Dividend or as Disclosed in the Disclosure Materials;

(e) **(issuing or granting securities or options)** any member of the Costa Group:

(i) issues securities;

(ii) grants an option over or to subscribe for its securities; or

(iii) agrees to make such an issue or grant such an option;

in each case to a person outside the Costa Group other than as Disclosed in the Disclosure Materials or as issued upon the vesting or exercise of Employee Share Rights that are in existence as at the date of this document to satisfy Costa's obligations under clause [illegible];

(e) **(securities or other instruments)** any member of the Costa Group issues or agrees to issue securities or other instruments convertible into shares or debt securities in each case to a person outside the Costa Group other than securities upon the exercise of Employee Share Rights that are in existence as at the date of this document as Disclosed in the Disclosure Materials;

(f) **Employee Share Rights**: any member of the Costa Group makes any amendment to the short-term and long-term incentive plans operated by the Costa Group or the terms of incentive plan performance rights or makes any determination or exercises any discretion under such incentive plans or the terms of incentive plan performance rights excluding any acceleration of Employee Share Rights in accordance with clause [illegible] and excluding any determination or exercise of the Costa Board's discretion in relation to the Company's CY23 short term incentive plan, provided that any benefits from such determination or exercise are paid solely in cash;

(g) **(constitution)** Costa or another member of the Costa Group adopts a new constitution or modifies or repeals its constitution or a provision of it;

(h) **(disposals)** any member of the Costa Group disposes or agrees to dispose of the whole or a substantial part of its businesses or property other than as Disclosed in the Disclosure Materials;

(i) **(acquisitions, leases or disposals)** any member of the Costa Group:

(1) acquires, leases or disposes of; or

(2) agrees to acquire, lease or dispose of; or

(3) offers, proposes or announces a bid or tender for,

any business, entity, asset or undertaking, the value of which exceeds $[illegible] (either individually or in the case of related businesses, entities, assets or a series of related transactions, collectively), other than in the ordinary course of business and consistent with past practice, or pursuant to the option to acquire the Costa Shanxi site or that has otherwise been Disclosed in the Disclosure Materials, but excluding any lease or agreement to lease real property other than any lease or agreement to lease which requires the relevant Costa Group member to pay $[illegible] or more per annum annually;

(j) **(Encumbrances)** other than in the ordinary course of business and consistent with past practice or as permitted under a financing document that has been Disclosed in the Disclosure Materials, any member of the Costa Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property;

(k) **(employment arrangements)** other than in the ordinary course of business and consistent with past practice any member of the Costa Group:

(1) increases the remuneration of or benefits to any of its directors, officers or employees, or otherwise materially varies the

employment arrangement (or pay any retention payment or bonus payment) to any Costa director, officer or employee (other than as Disclosed in the Disclosure Materials or as otherwise agreed between the parties);

(ii) accelerate the rights of any Costa director, officer or employee to compensation or benefits of any kind (excluding any acceleration of Employee Share Rights in accordance with clause [illegible] and any determination or exercise of the Costa Board's discretion in relation to the Company's CY23 short term incentive plan, provided that any benefits from such determination or exercise are only paid in cash); or

(iii) pay any Costa director, officer or employee a termination or retention payment (other than as Disclosed in the Disclosure Materials or in accordance with, or having substantially the same economic effect as that provided under, any existing contract in place at the date of this document or otherwise as may reasonably be required in the ordinary course of business);

[illegible] **(Material Contract)** any member of the Costa Group enters into, terminates, amends in a material manner or waives any material third party default, any material claim or rights in respect of, or waives the benefit of any material provision of, a Material Contract, excluding:

(i) the entry into any agreement by a subsidiary of Costa China (Hong Kong) Limited (or any subsidiary incorporated after the date of this document) that is on substantially the same terms as agreements that previously have been entered into by subsidiaries of that company and that have been Disclosed in the Disclosure Materials;

(ii) the renewal or extension of a lease or entry into a new lease in respect of real property that is leased by a member of the Costa Group as at the date of this document (in each case on substantially the same terms but subject to any market based increases in rent);

(iii) entry into any lease of real property that is associated with an approved capital expenditure request that has been Disclosed in the Disclosure Materials (other than any lease which requires the relevant Costa Group member to pay [illegible] or more on an annual basis);

(iv) entry into or amendment of a contract with a supplier for labour or items used in the ordinary course of business; and

(v) the renewal or replacement of insurance policies to cover similar risks to those covered by existing insurance policies as part of the annual insurance renewal on terms not materially less favourable than such existing insurance policies (other than in respect of price, provided that the new price is consistent with current market terms (which in any event will be deemed to have been satisfied by following the recommendation from a reputable insurance broker)),

and for the avoidance of doubt, the expiry of a Material Contract does not constitute termination;

[illegible] **(capital expenditure)** any member of the Costa Group undertakes capital expenditure in excess of [illegible] for any single item (other than as Disclosed in the Disclosure Materials or where considered by the relevant Costa Group member to be reasonably required for safety purposes or as otherwise agreed between the parties;

([illegible]) **(financial indebtedness)** any member of the Costa Group incurs any financial indebtedness in excess of [illegible] or issues any indebtedness or debt securities, other than in the ordinary course of business or pursuant to advances under its credit facilities in existence as at the date of this Agreement where the funds drawn pursuant to those advances are used in the ordinary course of business or are used to make payments that have been Disclosed in the Disclosure Materials or are otherwise permitted by this document;

([illegible]) **(granting of loans)** any member of the Costa Group makes any loans, advance or capital contribution to, or investment in, any other person in excess of [illegible] (other than as required for the incorporation of a new subsidiary of Costa China (Hong Kong) Ltd or to or in another member of the Costa Group in the ordinary course of business), or otherwise in the ordinary course of business; and

([illegible]) **(Insolvency)** any member of the Costa Group becomes Insolvent,

provided that a Costa Prescribed Event listed in items [illegible] will not occur where Costa has first consulted with Bidder in relation to the event and Bidder has (in its sole discretion) approved the proposed event or has not objected to the proposed event in writing within [illegible] Business Days of having been so consulted.

Costa Warranties means the representations and warranties of Costa set out in clause [illegible] and [illegible].

Costa Share means an ordinary fully paid share in the capital of Costa.

Costa Shareholder means each person registered in the Register as a holder of Costa Shares.

Costs includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

Debt Commitment Letter means a credit approved executed commitment letter and accompanying substantially agreed form Debt Facility Agreement from certain banks or other financial institutions addressed to Bidder and dated on or about the date of this document.

Debt Facility means each of the debt facilities to be made available to Bidder under the Debt Commitment Letter and any Debt Facility Agreements.

Debt Facility Agreement means a debt facility agreement to be entered into pursuant to a Debt Commitment Letter.

Deed Poll means a deed poll substantially in the form of Annexure C to this document.

Details means the section of this document headed “Details”.

Disclosed means in relation to a matter, event or circumstance, disclosed in sufficient detail so as to enable a reasonable person experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Costa Group) to identify the nature and scope of the relevant matter, event or circumstance.

Disclosure Materials means:

(a) information in an announcement made by Costa to ASX or document lodged with ASIC prior to the date of this document;

(b) the documents and information (including written responses to requests for further information) which are accessible in the data room made available by Costa to Bidder and its Representatives at [illegible] on [illegible]; and

(c) any other written responses to questions and information requests provided by Costa to Bidder and its Representatives.

EBITDA-S represents earnings before interest, tax, depreciation and amortisation, fair value movements in [illegible] (GARA) and material items.

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Employee Share Right means an option or performance right issued under the [illegible] Incentive Plan operated by the Costa Group (including for the avoidance of doubt the [illegible] Pre-IPO options issued by Costa).

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections [illegible] or [illegible] of the PPSA or any agreement to create any of them or allow them to exist.

End Date means [illegible] or such other date as is agreed by Bidder and Costa.

Equity Commitment Letter means the binding executed commitment letters addressed to Bidder and Costa from each Consortium Member dated on or about the date of this document, agreed to and accepted by Costa.

Excluded Shareholders means:

(a) Citibank N.A. Hong Kong Branch – Agency & Trust in respect of the ordinary shares in Costa held on behalf of Australian [illegible] Holdings [illegible], which as at the date of this document is [illegible] ordinary shares;

(b) [illegible] Pty Limited (ACN [illegible]) in respect of the ordinary shares in Costa held on behalf of Driscoll's, Inc., which as at the date of this document is [illegible] ordinary shares; and

(c) any Costa Shareholder who is a member of the Bidder Group or any Costa Shareholder who holds any Costa Shares on behalf of, or for the benefit of, any member of the Bidder Group and does not hold Costa Shares on behalf of, or for the benefit of, any other person, in each case as at the Record Date.

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

(a) the termination of this document in accordance with its terms; and

(b) the End Date.

Existing Facility Agreement means the syndicated facility agreement dated [illegible] June [illegible] for Costa Group with, among others, National Australia Bank Limited as Agent, as amended on [illegible] August [illegible], [illegible] June [illegible] and [illegible] June [illegible].

Financing Sources means the persons (including lenders, agents and arrangers) that have committed to provide or arrange or otherwise be entering into arrangements (including pursuant to the Debt Commitment Letter and the Debt Facility Agreement) with Bidder in connection with all or any part of the Debt Facility in connection with the Transaction, together with their affiliates, officers, directors, employees and representatives involved in such debt financing and their respective successors and assigns.

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

First Court Date means the first day on which an application made to the Court, in accordance with clause [illegible], for orders under section [illegible] of the Corporations Act convening the Scheme Meeting 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 (including any stock or other securities exchange), 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.

Headcount Test means the requirement under section [illegible] of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Costa Shareholders (other than Excluded Shareholders) present (either in person or by proxy).

Implementation Date has the meaning given in the Timetable.

Incoming Directors means each person notified in writing by Bidder to Costa prior to the Implementation Date to be appointed to the Costa Board or the board of any member of the Costa Group.

Independent Expert means the independent expert appointed by Costa under clause [illegible].

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet (including any update or supplementary report), stating whether in the Independent Expert's opinion the Scheme is in the best interests of Costa Shareholders (other than Excluded Shareholders).

A person is **Insolvent** if:

(a) it is or states that it is an insolvent under administration or insolvent (each as defined in the Corporations Act);

(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;

(c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);

(d) an application or order has been made (and, in the case of an application, which is not stayed, withdrawn or dismissed within [illegible] days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;

(e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;

(f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);

(g) it is otherwise unable to pay its debts when they fall due; or

(h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

Listing Rules means the official listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities.

Material Adverse Effect means a Specified Event which has, has had or is reasonably likely to have either individually or when aggregated with any other Specified Events, the effect of:

(a) the value of consolidated net assets of the Costa Group taken as a whole being reduced by at least [illegible]; or

(b) the value of consolidated annual EBITDA-S of the Costa Group (for the purposes of this definition, being EBITDA-S excluding non-recurring or non-trading items, calculated in accordance with the accounting policies and practices applied by Costa in preparing its financial statements for the half year ended [illegible] June [illegible]) being reduced by at least [illegible] on a sustained basis,

but does not include:

(c) any matter Disclosed or which might reasonably have been expected to arise from a matter, event or circumstance which was Disclosed or which would be disclosed in a search of:

(i) the PPS Register on [illegible] September [illegible];

(ii) the registry of the New South Wales Land Registry Services on [illegible] June [illegible];

(iii) the Victorian Land Titles Office on [illegible] June [illegible];

(iv) the registry of the High Court on [illegible] June [illegible];

(x) the registries of the Federal Court and the Federal Circuit Court (or any Judge thereof);

(xi) the registry of the Supreme Court of New South Wales (or any Judge thereof);

(xii) the registry of the Supreme Court of Queensland (or any Judge thereof);

(xiii) the registry of the Supreme Court of Western Australia (or any Judge thereof);

(xiv) the registry of the Supreme Court of Victoria (or any Judge thereof);

(xv) the registry of the Supreme Court of South Australia (or any Judge thereof);

(xvi) the registry of the Supreme Court of the Australian Capital Territory (or any Judge thereof);

(xvii) the registry of the Supreme Court of Tasmania (or any Judge thereof); or

(xviii) IP Australia (or any Judge thereof);

(d) any matter that is (including to in fact) within the actual knowledge of any Bidder as at the date of this document (which does not include mere knowledge of the risk of an event, circumstance, occurrence or matter happening);

(e) any matter, event or circumstance arising from:

(i) changes in general economic, industry, business or political conditions (including changes to domestic or international interest rates, exchange rates, commodity prices or financial markets, the securities market in general or tax (including taxation laws);

(ii) any act of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, civil unrest or outbreak, cyber attack or escalation of any disease, epidemic or pandemic (including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or COVID-19 pandemic); and

(iii) any act of God, natural disaster, lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide, epidemic, virus, bacterial infection or other disease on or after the date of this document;

(f) any change in generally accepted accounting principles or the interpretation of them;

(g) any change arising from market value adjustments to derivatives or debts;

(h) any change occurring directly or indirectly as a result of any matters, event or circumstance required or permitted by this document, the Scheme or the transactions contemplated by them;

(i) any change relating to third party costs and expenses incurred by Costa Group associated with the Transaction, including any fees payable to external advisers of Costa;

(j) any change arising from an act of Bidder or otherwise taken at the written request of Bidder or occurring with the written consent of Bidder; or

(k) any change required by applicable law or regulation.

Material Contract means a contract or commitment:

(a) between a Costa Group Member and any joint venturer;

(b) requiring total payments (whether by Costa or the counterparty) in excess of an amount equal to [illegible] of the Costa Group's EBITDA for the previous financial year;

(c) giving rise to exclusive or non-exclusive supply or purchase arrangements for a period of greater than [illegible] months;

(d) for the employment of any person whose base compensation (including superannuation benefits) exceeds [illegible];

(e) under which any member of the Costa Group is a lessee of, or holds or operates, any material real property owned by any other party (including any lease in respect of the Costa's hass citrus property and any lease for worker accommodation);

(f) that includes an exclusive licence over any intellectual property of the Costa Group;

(g) containing a covenant not to compete granted by any member of the Costa Group in favour of a third party that materially prohibits or restricts any member of the Costa Group from engaging in business anywhere in the world; or

(h) which is entered into other than in the ordinary course of business and which may otherwise be expected to be material to the operations of the Costa Group as a whole,

and includes the contracts agreed between Bidder and Costa to constitute Material Contracts.

Outgoing Directors means each person notified in writing by Bidder to Costa prior to the Implementation Date to resign from the Costa Board or the board of any member of the Costa Group.

Paine Schwartz Confidentiality Deed means the confidentiality deed between Costa and Paine Schwartz Partners, LLC dated [illegible] May [illegible] as amended from time to time.

Permitted Dividend means an interim dividend of up to [illegible] per Costa Share in respect of the financial half year ended [illegible] June [illegible] declared or determined by the Costa Board (whether fully franked or otherwise) after [illegible] June [illegible].

PPS Register means the Personal Property Securities Register established under the PPSA.

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

Public Announcement has the meaning given in clause [illegible].

Recommendation has the meaning given in clause [illegible].

Record Date has the meaning given in the Timetable.

Register means the share register of Costa and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means an approval of a Regulatory Authority to the Scheme or any aspect of it which is necessary or desirable to implement the Scheme.

Regulatory Authority means:

(a) ASX, ACCC, ASIC and the Takeovers Panel;

(b) a Government Agency;

(c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and

(d) any regulatory organisation established under statute.

Related Body Corporate has the meaning given in the Corporations Act and in respect of Bidder is deemed to include the following:

(a) each Consortium Member;

(b) each Consortium Member's respective Related Bodies Corporate,

excluding any investee or portfolio entities of a fund or vehicle in which a Consortium Member invests in the ordinary course of its investment operations.

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

Representative means, in relation to a party:

(a) a Related Body Corporate;

(b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or

(c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

Required Bank Information means such information in connection with the Costa Group as is reasonably required by Bidder and/or its financing sources to obtain and syndicate and consummate the Debt Facility.

Reverse Break Fee means [illegible].

Sanctioned Country means at any time a country, region or territory which is the subject or target of any country-wide or territory-wide Sanctions (being, as at the date of this document, Cuba, the Crimea, Donetsk, Luhansk and Sevastopol regions of Ukraine, Myanmar, Iran, North Korea, Russia and Syria).

Sanctions means any economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by:

(a) the United States (including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State);

(b) the United Nations Security Council;

(c) the European Union;

(d) any EU member state;

(e) the United Kingdom;

(f) Canada; or

(g) the Commonwealth of Australia,

or any other sanctions regime which may be applicable.

Scheme means the scheme of arrangement under Part [illegible] of the Corporations Act under which all the Costa Shares (other than the Costa Shares held by Excluded Shareholders) will be transferred to Bidder substantially in the form of Annexure B together with any amendment or modification made pursuant to section [illegible] of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Costa Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration means the consideration payable by Bidder for the transfer of Costa Shares held by a Scheme Participant to Bidder, being in respect of each Costa Share:

(a) a cash amount of [illegible] *less*

(b) the cash amount of any dividend declared or determined by the Costa Board (whether or not franked or otherwise) and paid by Costa to Costa Shareholders between the date of this document and the Implementation Date.

Scheme Meeting means the meeting to be convened by the Court at which Costa Shareholders (other than Excluded Shareholders) will vote on the Scheme.

Scheme Participants means each person who is a Costa Shareholder at the Record Date (other than an Excluded Shareholder).

Scheme Participant Declaration means a declaration in accordance with the requirements of sections [illegible] and [illegible] of Schedule [illegible] to the TAA that covers at least the period between (and including) the date of this document and the Implementation Date.

Scheme Resolution means the resolution to be put to Costa Shareholders (other than Excluded Shareholders) to approve the Scheme, which resolution is to be put to Costa Shareholders (other than Excluded Shareholders) at the Scheme Meeting and that is to be passed by, or be approved by, the requisite majorities of Costa Shareholders (other than Excluded Shareholders) under section [illegible] of the Corporations Act.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme and will occur on the date set out in the Timetable.

Specified Event means an event, occurrence or matter that:

(a) occurs after the date of this document;

(b) occurs before the date of this document but is only announced or publicly disclosed after the date of this document; or

(c) will or is likely to occur after the date of this document and which has not been publicly announced prior to the date of this document.

Subsidiary of an entity means another entity which:

(a) is a subsidiary of the first entity within the meaning of the Corporations Act; or

(b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

A trust, partnership or fund may be a Subsidiary, and an entity may be a Subsidiary of a trust, partnership or fund if it would have been a subsidiary under that definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share (for the operation of section 46 of the Corporations Act).

Superior Proposal means a bona fide Competing Transaction which the Costa Board, acting in good faith and in order to satisfy what the Costa Board considers to be its fiduciary or statutory duties, and after taking advice from its legal and financial advisers, determines:

(a) is reasonably capable of being valued and completed in accordance with its terms, having regard to confidentiality and taking into account all relevant legal, financial, timing, regulatory and other aspects of such Competing Transaction (including the capacity of the competing party to consummate the transaction contemplated by the Competing Transaction (including having regard to funding sources), in each case, to the extent known to the Costa Board); and

(b) would, or would be reasonably likely to, result in a transaction more favourable to Costa Shareholders (other than Excluded Shareholders) than the Scheme (if completed substantially in accordance with its terms), taking into account all aspects of the Competing Transaction, including its price and terms and conditions,

after taking into account a qualitative assessment of the identity, reputation and financial condition of the person making such proposal and legal, regulatory and financial matters.

TAA means the *Taxation Administration Act 1953* (Cth).

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) or both as the context requires.

Taxes means taxes, levies, imposts, charges, duties (including stamp and transaction duties), goods and services tax (including GST), fees, deductions, compulsory loans or withholdings that are assessed, levied, imposed or collected by any authority, together with any fees, fines, penalties and interest in connection with any of the above.

Timetable means the timetable set out in Schedule [illegible], subject to any amendments agreed by the parties in writing.

Transaction means the acquisition of all of the ordinary shares in Costa by Bidder, including through implementation of the Scheme in accordance with the terms of this document.

Trust Account means an Australian dollar denominated trust account held with an Australian bank operated by Costa (or by the share registry of Costa on behalf of Costa) to hold the Scheme Consideration on trust for the purposes of paying the Scheme Consideration to the Scheme Participants in accordance with clause [illegible] and the Scheme.

Voting Intention has the meaning given in clause [illegible].

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

(a) the singular includes the plural and vice versa;

(b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);

(c) a reference to a document also includes any variation, replacement or novation of it;

(d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;

(e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;

(f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(g) a reference to a time of day is a reference to Sydney or Melbourne time;

(h) a reference to dollars or A$ is a reference to the currency of Australia;

(i) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);

(j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;

(k) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);

(l) a reference to a group of persons is a reference to any [illegible] or more of them jointly and to each of them individually;

(w) a reference to anything (including any amount) is a reference to the whole and each part of it;

1.3 Bidder knowledge

(a) In this document, unless otherwise specified, a reference to the knowledge, belief or awareness of Bidder is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing (in each case as at the date of this document having made reasonable enquiries of each other and of their direct reports). The knowledge, belief or awareness of any other person will not be imputed to Bidder (except to the extent referred to in clause 1.3(a)).

(b) Without limiting clause 1.3(a), the persons referred to in clause 1.3(a) as being agreed between the parties in writing will not bear any personal liability in respect of the Bidder Warranties or otherwise under this document, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.4 Costa knowledge

(a) In this document, unless otherwise specified, a reference to the knowledge, belief or awareness of Costa is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing (in each case as at the date of this document having made reasonable enquiries of each other and of their direct reports). The knowledge, belief or awareness of any other person will not be imputed to Costa (except to the extent referred to in clause 1.4(a)).

(b) Without limiting clause 1.4(a), the persons referred to in clause 1.4(a) as being agreed between the parties in writing will not bear any personal liability in respect of the Costa Warranties or otherwise under this document, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.5 Obligations in respect of joint ventures

Where this document:

(a) requires or purports to require any member of the Costa Group to act or to refrain from acting; or

(b) otherwise specifies or purports to specify the obligations of a member of the Costa Group,

in relation to a Costa Joint Venture Entity, then the obligations of Costa and the applicable Costa JVE Member will be limited to using the rights within its control (whether through shareholder, director or other rights) to, where possible, procure that the Costa Joint Venture Entity acts or refrains from acting in accordance with this document and otherwise complies with those obligations under this document which are expressed to apply to members of the Costa Group. Any failure of Costa and the applicable Costa JVE Member to procure that the Costa Joint Venture Entity acts or refrains from acting will not of itself constitute or result in:

(c) a breach of this document by Costa or otherwise give rise to any right for Bidder to terminate this document;

(d) a Material Adverse Effect or Costa Prescribed Event; or

(e) any liability on behalf of Costa and Costa Indemnified Parties.

and together with any consequences that are otherwise disregarded when applying the operation of any other provisions of this document provided that Costa or the applicable Costa JOE Member has complied with this clause [illegible].

2 Agreement to propose and implement Scheme

2.1 Costa to propose Scheme

Costa agrees to propose the Scheme on and subject to the terms and conditions of this document.

2.2 Agreement to implement Scheme

The parties agree to implement the Scheme on the terms and conditions of this document.

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 to implement the Scheme (including the obligations of Bidder under clause [illegible]) are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause 3.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	**(Regulatory Approvals – FIRB)** before [illegible] on the Business Day before the Second Court Date either of the following occurs: (1) the Treasurer of the Commonwealth of Australia (or their delegate) provides written notice under the FIRB Act stating that, or to the effect that, the Commonwealth Government has no objection to the Transaction either unconditionally or subject only to: (A) 'standard' tax conditions which are in the form, or substantially in the form, of those set out in items [illegible] to [illegible] of Part D of FIRB's Guidance Note 12 'Tax Conditions' (in the form last updated on [illegible] August [illegible]); and (B) such other conditions or undertakings required or requested by FIRB which are acceptable to Bidder acting reasonably and in good faith.	Cannot be waived	Bidder

	Condition Precedent	Party entitled to benefit	Party responsible
	(ii) following the Bidder giving notice under the FIRB Act of the Transaction, the Treasurer (or the Commonwealth of Australia) becomes precluded from making an order or decision under Division [illegible] of Part [illegible] of the FIRB Act in respect of the Transaction and the [illegible] day period referred to in section [illegible] of the FIRB Act has ended or the period referred to in section [illegible] of the FIRB Act has ended (whichever is applicable); or (iii) where an interim order is made under section [illegible] of the FIRB Act in respect of the Transaction, the subsequent period for making an order or decision under Part [illegible] of the FIRB Act elapses without the Treasurer of the Commonwealth of Australia making such an order or decision. (**FIRB Approval**).		
(b)	**(Regulatory Approvals – Morocco)** before [illegible] on the Second Court Date, insofar as the Transaction constitutes a concentration within the scope of law [illegible] (as amended) (***Moroccan Competition Law***), the Moroccan Competition Council has formally notified Bidder of a decision approving the Transaction without conditions or subject to conditions satisfactory to Bidder (acting reasonably) or be deemed to have tacitly approved the Transaction under Article [illegible] or Article [illegible] of the Moroccan Competition Law.	Cannot be waived	Both
(c)	**(Regulatory Approvals – European Union)** before [illegible] on the Second Court Date, insofar as the Transaction constitutes a concentration with a Community dimension within the scope of Council Regulation (EC) [illegible] (as amended) (***Merger Regulation***), the European Commission: (i) has formally notified Bidder of a decision declaring the Transaction compatible with the internal market under Article [illegible] or [illegible] of the Merger Regulation without conditions or subject to conditions satisfactory to Bidder (acting reasonably); or (ii) has not formally notified Bidder of a decision in accordance with Article [illegible] or [illegible] of the Merger Regulation within the time limits set in	Cannot be waived	Both

Condition Precedent		Party entitled to benefit	Party responsible
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□□□□	**(Regulatory intervention)** □□ C□□rt □r Re□□□at□r□A□th□r□t□ha□ □□□□ed □r ta□e□ □te□□ t□ □□□□e a□ □rder□te□ □□rar□re□tra□□□□ □rder□	□□th	□□th

	Condition Precedent	Party entitled to benefit	Party responsible
	preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date;		
(h)	**(ASIC and ASX)** ASIC and ASX have issued or provided such consents, confirmations or approvals or have done such other acts which the parties agree are reasonably necessary or desirable to implement the Transaction and those consents, confirmations, approvals or other acts have not been withdrawn or revoked as at 8.00am on the Second Court Date;	Both	Both
(i)	**(Independent Expert)** the Independent Expert issues a report which concludes that the Scheme is in the best interests of Costa Shareholders (other than Excluded Shareholders) before the date on which the Scheme Booklet is lodged with ASIC and the Independent Expert does not change its conclusion or withdraw its report by notice in writing to Costa prior to 8.00am on the Second Court Date;	Costa	Costa
(j)	**(No Costa Prescribed Event)** no Costa Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date;	Bidder	Costa
(k)	**(No Material Adverse Effect)** no Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Bidder	Costa

3.2 Reasonable endeavours

Each of Costa and Bidder agree to use reasonable endeavours to procure that:

(a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):

(i) is satisfied as soon as practicable after the date of this document; and

(ii) continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and

(b) there is no occurrence that would or would be likely to hinder or prevent a Condition Precedent for which it is a party responsible being satisfied.

3.3 Regulatory matters

Without limiting clause [illegible], each party:

(a) **(consultation)** must consult with the other party in advance in relation to all material communications (whether written or oral and whether direct or via a Representative) with any Regulatory Authority relating to the Transaction and:

(i) provide the other party with such information and input required to complete any written communication to be sent to a Regulatory Authority as the other party reasonably requests;

(ii) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and make any amendments as the other party reasonably requires; and

(iii) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so,

for the avoidance of doubt:

(iv) neither party is required (other than in accordance with the Confidentiality Deed) to disclose commercially sensitive information in relation to the application for a Regulatory Approval or any written communication to a Regulatory Authority to the other party, and the party applying for a Regulatory Approval or providing such written communication may, as applicable, withhold or redact information or documents from the other party to the extent that they are confidential to any other person or commercially sensitive and confidential to the applicant; and

(v) the party applying for a Regulatory Approval is not prevented from taking any step (including communicating with a Regulatory Authority) in respect of a Regulatory Approval if the other party has not promptly responded under this clause [illegible]; and

(vi) to the extent there is any conflict between this clause [illegible] and clause [illegible] of the [illegible] Confidentiality Deed, this clause [illegible] shall prevail; and

(b) **(Regulatory Authority)** must use reasonable endeavours to seek to obtain the Regulatory Approvals on an unconditional basis and where a Regulatory Approval can only be obtained subject to conditions or undertakings, subject to conditions or undertakings which are acceptable to Bidder (acting reasonably and in good faith).

3.4 Waiver of Conditions Precedent

(a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent (and jointly by each party where a Condition Precedent is expressed to be for the benefit of both parties, as noted in clause [illegible]) and will be effective only to the extent specifically set out in that waiver.

(b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause [illegible] may do so in its absolute discretion.

(c) If either Costa or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause, then:

(1) that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; and

(2) if the waiver of the Condition Precedent is itself conditional and the other party:

(A) accepts the conditions, the terms of that condition apply; or

(B) does not accept the conditions, the Condition Precedent has not been waived.

(d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:

(1) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or

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

3.5 Notices in relation to Conditions Precedent

Each party must:

(a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the satisfaction, breach or non-fulfilment of a Condition Precedent which it is responsible for satisfying;

(b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent which it is responsible for satisfying, or of any event which will prevent a Condition Precedent being satisfied;

(c) **(Scheme Meeting or Second Court Date)** where it considers that a Condition Precedent for which the other party is responsible for satisfying may not be satisfied by the Scheme Meeting or the Second Court Date, promptly give the other party notice; and

(d) **(notice of waiver)** upon receipt of a notice given under clause [illegible], give written notice to the other party as soon as reasonably practicable (and in any event before [illegible] on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.6 Consultation on failure of Condition Precedent

If:

(a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;

(b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or

(c) the Scheme has not become Effective by the End Date,

either party may serve notice on the other party (**Consultation Notice**) and the parties must consult in good faith with a view to determine whether:

(d) the Scheme may proceed by way of alternative means or methods;

(e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court;

(f) to change the date of the application made to the Court for an order under paragraph [illegible] of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing between the parties (provided there is a reasonable prospect that the Condition Precedent will be satisfied before the End Date); or

(g) to extend the End Date.

3.7 Failure to agree

If the parties are unable to reach agreement under clause [illegible] within [illegible] Business Days after the date on which the Consultation Notice is given (or any shorter period ending at [illegible] on the day before the Second Court Date):

(a) subject to clause [illegible], either party may terminate this document (and that termination will be in accordance with clause [illegible]); or

(b) if a Condition Precedent may be waived and exists for the benefit of one party, that party may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause [illegible]),

in each case before [illegible] on the Second Court Date.

A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

4 Outline of Scheme

4.1 Scheme

Costa must propose a scheme of arrangement under which:

(a) all the Costa Shares held by Scheme Participants at the Record Date will be transferred to Bidder; and

(b) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

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

4.3 Payment of Scheme Consideration

(a) Subject to this document and the Scheme, Bidder undertakes to Costa (in its own right and separately as trustee or nominee for each Scheme Participant) that, in consideration of the transfer to Bidder of each Costa Share held by a Scheme Participant, Bidder will, no later than the Business Day before the Implementation Date, pay or procure the payment of an amount at least equal to the Scheme Consideration into the Trust Account in accordance with the Scheme, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account.

(b) On the Implementation Date, subject to Bidder having satisfied its obligations in clause 4.3(a):

(1) Costa must pay or procure the payment from the Trust Account to each Scheme Participant the Scheme Consideration that that Scheme Participant is entitled to under this clause; and

(2) subject to Costa satisfying its obligations in clause 4.3(b)(1), Bidder must accept the transfer to it of each Costa Share held by a Scheme Participant.

Where the calculation of the Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

4.4 Employee incentives

(a) Costa must ensure that, by no later than [illegible] on the Effective Date, there are no outstanding Employee Share Rights.

(b) In order to comply with its obligations under clause 4.4(a), Costa must:

(1) cause some or all of the outstanding Employee Share Rights (including all rights under Costa's CY22 and CY23 Long Term Incentive Plans) to vest and, following such vesting:

(A) cause the relevant number of Costa Shares to be transferred or issued (as applicable) to the relevant former holder in sufficient time to allow the relevant former holders of the relevant Employee Share Rights to participate in the Scheme; or

(B) cause cash equivalent payments to be made to the former holders of the relevant Employee Share Rights; and

(2) take such action as may be necessary to [illegible] to lapse, or be cancelled, before the Effective Date any outstanding Employee Share Rights which it does not cause to vest in accordance with clause [illegible].

4.5 No amendment to the Scheme without consent

Costa 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.

4.6 Permitted Dividends

(a) Subject to clause [illegible], Bidder acknowledges and agrees that at any time prior to the Implementation Date, Costa may, in its absolute discretion, announce, declare and pay to Costa Shareholders a Permitted Dividend.

(b) If Costa announces, declares and pays a Permitted Dividend in accordance with clause [illegible]:

(1) except with the prior written consent of Bidder, the maximum amount of the Permitted Dividend must not exceed [illegible] per Costa Share;

(2) the record date of the Permitted Dividend must be a date at least [illegible] days before the Record Date;

(3) the Permitted Dividend must be determined to be paid, or declared and paid, no later than the Implementation Date and if the distribution is made on or before [illegible] December [illegible], the franking percentage of the Permitted Dividend must be [illegible] (or such other franking percentage as agreed by Bidder acting reasonably) (subject to (for the avoidance of doubt) clauses [illegible] and [illegible]);

(4) the Permitted Dividend must not be in breach of the 'benchmark rule' in section [illegible] of the Tax Act or the benchmark rules, as defined in that section, does not apply in respect of the Permitted Dividend under section [illegible] of the Tax Act;

(5) the Permitted Dividend must be franked, except if Costa's franking account (as defined in section [illegible] of the Tax Act) is in deficit (as defined in section [illegible] of the Tax Act) as at the date the Permitted Dividend is announced or declared, in which case Costa may (subject to compliance with clause [illegible]) frank the Permitted Dividend to the extent of the surplus, provided the franking account is not in deficit on the Implementation Date (and/or earlier) as at the end of the income year in which the Permitted Dividend is paid (taking into account any reasonably expected tax refund in respect of any tax payments or instalments made for the period up to the Implementation Date); and

(6) the Permitted Dividend must be paid in accordance with the requirements of the Corporations Act.

4.7 Costa's Franking Account

(a) If Costa proposes to frank the Permitted Dividend in accordance with clause [illegible]:

(1) Costa must provide to the Bidder details (satisfactory to Bidder acting reasonably) of its current franking account balance, the basis on which the Permitted Dividend is to be franked consistent with the requirements in clause [illegible] prior to

announcement or declaration of the Permitted Dividend, or clarification if the details are not satisfactory to the Bidder (acting reasonably), Costa will not pay the Permitted Dividend; and

(iii) Costa will take into account any reasonable comments received by the Bidder following the Bidder's prompt review of the details provided under clause (i) in all regards in the manner in which Costa proposes to pay the Permitted Dividend.

(e) For the purpose of determining Costa's franking account balance on 31 December 2019 and the Implementation Date, Costa will provide its current franking account no later than 10 Business Days prior to 31 December 2019 (or 10 Business Days prior to the Implementation Date) and promptly notify of any changes to the franking account between the announcement or declaration of the Permitted Dividend and the Implementation Date.

4.8 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of Costa's obligations under this clause 4 and provided Bidder has, by that time, acquired the Costa Shares held by each Scheme Participant in accordance with the Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable law and the other terms of this Scheme, the Deed Poll and this document, that surplus (less any bank fees and related charges) shall be paid by Costa (or the share registry on behalf of Costa) to Bidder.

5 Implementation

5.1 General obligations

Costa and Bidder must each:

(a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and

(b) procure that its officers and advisers work in good faith and in a timely and co-operative 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.

5.2 Costa's obligations

Costa must take all reasonable steps to implement the Scheme on a basis consistent with this document as soon as reasonably practicable and must:

(a) **(announce directors' recommendation)** include in the Public Announcement the public statements made to Costa by each member of the Costa Board of:

(i) the Recommendation; and

(ii) a statement that each Costa Board member who holds Costa Shares or who has control over voting rights attaching to, or a Relevant Interest in, Costa Shares intends to vote his or her Costa Shares or procure that the Costa Shares the voting rights over which the Costa Board member has control over or has a

Relevant Interest are voted in favour of the Scheme (**Voting Intention**),

subject to:

(A) the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Costa Shareholders (other than Excluded Shareholders); and

(B) there being no Superior Proposal;

(b) **(preparation of Scheme Booklet)** subject to clause [illegible], as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:

(1) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide [illegible] and the Listing Rules; and

(2) without limiting clause [illegible], the Scheme Booklet will include or be accompanied by:

(A) the Scheme;

(B) the Notice of Meeting;

(C) a copy of this document (without the schedules) or a summary of it;

(D) the Independent Expert's Report;

(E) a statement by the Costa Board:

(aa) that the Costa Board unanimously considers the Scheme to be in the best interests of Costa Shareholders (other than Excluded Shareholders) and recommends that Costa Shareholders (other than Excluded Shareholders) vote in favour of the Scheme, subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Costa Shareholders (other than Excluded Shareholders) and there being no Superior Proposal; and

(bb) that each Costa Board member (who holds Costa Shares) intends to vote his or her Costa Shares in favour of the Scheme, subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Costa Shareholders (other than Excluded Shareholders) and there being no Superior Proposal;

(c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;

(d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

(e) **(consultation with Bidder)** consult with Bidder as to the content and presentation of:

(1) the Scheme Booklet, which includes:

(A) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Bidder);

(B) taking all reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;

(C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and

(D) obtaining Bidder's consent to the inclusion of the Bidder Information (or any information derived from or prepared based on reliance on the Bidder Information), including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet; and

(2) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 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 any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;

(f) **(lodgement of Regulator's Draft)**

(1) no later than [illegible] days before the First Court Date, provide the Regulator's Draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act and provide a copy of the Regulator's Draft to Bidder immediately thereafter; and

(2) keep Bidder reasonably informed of any issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those issues (provided that, where those issues relate to Bidder Information, [illegible] must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld) and keep Bidder informed of the resolution of such issues; and

(3) take all reasonable steps in cooperation with Bidder to resolve any such matters;

(g) **(indication of intent)** apply to ASIC for a letter indicating whether ASIC proposes to make any submissions to the Court or intervene to oppose the Scheme on the First Court Date;

(h) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Costa becomes aware:

(1) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or

(2) of information that is required to be disclosed to Costa Shareholders under any applicable law but was not included in the Scheme Booklet,

it must:

(3) promptly consult with Bidder in good faith as to the need for and the form of any supplementary disclosure to Costa Shareholders;

(4) to the extent that it is reasonably practicable to do so, provide Bidder with drafts of any documents that it proposes to issue to Costa Shareholders under this clause and act reasonably and in good faith taking into account for the purpose of amending such drafts any comments received in a timely manner from Bidder or its Representatives on those drafts; and

(5) make any disclosure that Costa considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause [illegible] if it applied as at the date that information arose;

(i) **(approval of Scheme Booklet)** as soon as practicable after ASIC has provided its indication or comment in accordance with clause [illegible], procure that a meeting of the Costa Board is convened to approve the Scheme Booklet for despatch to Costa Shareholders and provide Bidder with a copy of an extract of the applicable resolution from the applicable minutes of meeting as soon as practicable after those minutes have been prepared and signed;

(j) **(Court application)** apply to the Court for an order under section [illegible] of the Corporations Act directing Costa to convene the Scheme Meeting;

(k) **(registration of Scheme Booklet)** if the Court directs Costa to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section [illegible] of the Corporations Act;

(l) **(send Scheme Booklet)** take all reasonable steps necessary to comply with the orders of the Court including, as required, to send the Scheme Booklet to Costa Shareholders as soon as practicable after the Court orders Costa to convene the Scheme Meeting;

(m) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section [illegible] of the Corporations Act provided that if this document is terminated under clause [illegible] it will take all steps reasonably required to ensure the Scheme Meeting is not held;

[illegible] **(director's voting)** use its best endeavours to procure that each member of the Costa Board acts in accordance with their Voting Intentions and votes any Costa Shares in which they have a Relevant Interest in favour of the Scheme;

[illegible] **(Court approval)** subject to all Conditions Precedent (other than paragraph [illegible] of clause [illegible]) being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with section [illegible] and [illegible] of the Corporations Act;

[illegible] **(Conditions Precedent certificate)** at the hearing on the Second Court Date provide to the Court (through its counsel):

[illegible] a certificate signed by one of its directors and made in accordance with a resolution of its board (or any other evidence as the Court may request) confirming (in respect of matters within Costa's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause [illegible] (other than paragraph [illegible]) have been satisfied or waived in accordance with clause [illegible], a draft of which must be provided to Bidder by [illegible] on the Business Day prior to the Second Court Date; and

[illegible] any certificate provided to it by Bidder under clause [illegible];

[illegible] **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Costa Shareholders (other than Excluded Shareholders) at the Scheme Meeting in accordance with section [illegible] of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by Bidder);

[illegible] **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration and, as soon as practicable after the Record Date, and in any event at least three Business Days before the Implementation Date, give to Bidder (or as it directs) details of the names, registered addresses and holdings of Costa Shares of every Costa Shareholder as shown in the Register as at the Record Date, in such form as Bidder may reasonably require;

[illegible] **(information)** provide all necessary information, and procure that the share registry of Costa provide all necessary information, to Bidder about the Scheme and Costa Shareholders (including the results of directions by Costa to Costa Shareholders under Part [illegible] of the Corporations Act), in each case in a form reasonably requested by Bidder and at least [illegible] a week, which Bidder reasonably requires in order to:

[illegible] canvass agreement to the Scheme and/or discuss the Scheme with Costa Shareholders; and

[illegible] facilitate the provision by Bidder of the Scheme Consideration;

[illegible] **(representation)** allow, and not oppose, any application by Bidder for leave of the Court to be represented, or the separate representation of Bidder by counsel, at the Court hearings heard for the purposes of sections [illegible] and [illegible] of the Corporations Act in relation to the Scheme;

[illegible] **(instruments of transfer)** subject to Bidder satisfying its obligations under clause [illegible], on the Implementation Date:

(ii) execute proper instruments of transfer and effect the transfer of Costa Shares to Bidder in accordance with the Scheme; and

(iii) register all transfers of Costa Shares held by Scheme Participants to Bidder;

(v) **(Suspension of trading)** apply to ASX to suspend trading in Costa Shares with effect from the close of trading on the Effective Date;

(w) **(listing)** take all reasonable steps to maintain Costa's listing on ASX, notwithstanding any suspension of the quotation of Costa Shares, up to and including the Implementation Date, including making any appropriate applications to ASX and ASIC;

(x) **(publication of information on website)** promptly after they become available, publish on its website the date fixed for any Court hearing in relation to the Scheme (including any adjournment or continuance of the hearing), the date of the Scheme Meeting and the text of all announcements made to ASX in connection with the Scheme;

(y) **(Bidder Information)** during the period, not use the Bidder Information or any information derived from or prepared solely in reliance on the Bidder Information [illegible] use that information with the prior written consent of Bidder;

(z) **(Promote Transaction)** subject to a majority of the Costa Board not having publicly withdrawn, adversely changed, adversely modified or adversely qualified their recommendation that Costa Shareholders (other than Excluded Shareholders) approve the Scheme Resolution (in each case as permitted under clause [illegible]), to the extent permitted by law, provide reasonable cooperation and assistance to promote the merits of the Transaction to Costa Shareholders and updates in respect of the same as reasonably requested by Bidder, including:

(i) considering in good faith Bidder's reasonable suggestions regarding shareholder engagement and proxy solicitation actions to promote the merits of the Transaction and encouraging Costa Shareholders (other than Excluded Shareholders) to vote on the Scheme in accordance with the Recommendation; and

(ii) meeting with key Costa Shareholders and soliciting proxy votes in favour of the Scheme;

(aa) **(Information regarding proxies and voting)** except to the extent prohibited by law or regulation, provide (and where relevant procure that the share registry of Costa provides):

(i) all necessary information in the possession of Costa or the share registry of Costa (as applicable) that is reasonably requested by Bidder from time to time for the purpose of understanding the beneficial ownership of Costa Shares; and

(ii) proxy appointments and directions received for the Scheme Meeting by Costa or the share registry of Costa prior to the Scheme Meeting, which in the period commencing on [illegible] Business Days prior to the Scheme Meeting up to the deadline for the receipt of proxies, must be provided every Business Day.

(bb) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws and regulations; and

(cc) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

5.3 Bidder's obligations

Bidder must take all reasonable steps to assist Costa to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

(a) **(Bidder Information)** prepare and promptly provide to Costa for inclusion in the Scheme Booklet the Bidder Information in accordance with all applicable laws (including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide [illegible] and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;

(b) **(further Bidder Information)** promptly provide to Costa any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Costa Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause [illegible] if it applied as at the date on which such further or new Bidder Information arises;

(c) **(approval of Scheme Booklet)** as soon as practicable after ASIC has provided its indication of intent, procure that a meeting of the Board of directors of Bidder (or of a committee of the Board appointed for the purpose) is convened to approve those sections of the Scheme Booklet that comprise Bidder Information as being in a form appropriate for despatch to Costa Shareholders, and provide Costa with a copy (or an extract) of the applicable resolutions from the applicable minutes of meeting as soon as practicable after those minutes have been prepared and signed);

(d) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;

(e) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section [illegible] of the Corporations Act, at which through its counsel, Bidder must undertake (if requested by the court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;

(f) **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll;

(g) **(Conditions Precedent certificate)** before [illegible] on the Second Court Date, provide to Costa for provision to the Court at the hearing on that date a certificate signed by one of its directors and made in accordance with a resolution of its board (or any other evidence as the Court may request) confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent for which Bidder is responsible, as noted in clause [illegible] (other than paragraph (b)) have been satisfied or [illegible] in accordance with clause [illegible] (a draft of which must be provided to Costa [illegible] the Business Day prior to the Second Court Date);

(h) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Costa Shares as contemplated by clause [illegible];

(i) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause [illegible] and the terms of the Scheme; and

(j) **(change to debt or equity funding)** promptly provide details to Costa of any:

(1) change to the identity of any debt financier (or syndicate of debt financiers) provided in the Debt Commitment Letter or equity investor (or consortium of equity investors) provided in the Equity Commitment Letter;

(2) termination or repudiation (or the threatened or purported termination or repudiation) of the Debt Commitment Letter or Equity Commitment Letter of which Bidder or another member of the Bidder Group has knowledge and which Costa is not actually aware of; or

(3) any breach of, or default under the Debt Commitment Letter or Equity Commitment Letter by any party of which Bidder or another member of the Bidder Group has knowledge where the occurrence of which would prevent (or would be reasonably likely to prevent) the receipt of all of the debt and equity financing which is expected to be made available to satisfy Bidder's obligations under this document, the Scheme and Deed Poll.

5.4 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet will be in a form to be agreed by the parties and will contain words to the effect of:

(a) Costa has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Costa by a third party; and

(b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that Costa and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Bidder has prepared and has responsibility for.

5.5 Disagreement on content of Scheme Booklet

If after a reasonable period of consultation and compliance by Costa with its obligations under clause [illegible], Bidder and Costa (each acting reasonably and in good faith) disagree on the form or content of the Scheme Booklet, then:

(a) if the disagreement relates to the form or content of the Bidder Information (or any information derived from or prepared in reliance on the Bidder Information) contained in the Scheme Booklet, Costa will make such amendments as Bidder reasonably requires; and

(b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Costa Board (acting in good faith) decides the final form or content of the disputed part of the Scheme Booklet.

5.6 Verification

Each party must undertake appropriate verification processes for the information supplied by that party for the Scheme Booklet.

5.7 Conduct of Court proceeding

Costa and Bidder are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give Costa 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. Costa and Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

5.8 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Bidder and Costa must appeal the Court's decision to the fullest extent possible except to the extent that:

(a) the parties agree otherwise; or

(b) an independent senior counsel of the Victorian Bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause [illegible].

5.9 Scheme voted down because of Headcount Test

If the Scheme is not approved by Costa Shareholders (other than Excluded Shareholders) at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Costa or Bidder considers, acting reasonably, that share splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Costa must:

(a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and

(b) make such submissions to the Court and file such evidence as counsel engaged by Costa 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 section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

5.10 No partnership or joint venture

Subject to this document, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

5.11 Financing Cooperation

(a) During the period from the date of this agreement to the earlier of the Implementation Date and the termination of this agreement in accordance with its terms, Costa must provide and must cause each member of the Costa Group and use its commercially reasonable efforts to procure that their respective Representatives provide such cooperation as may be reasonably requested by Bidder or its Representatives and take such actions in connection with the debt financing contemplated under the Debt Commitment Letter and/or Debt Facility Agreement necessary to syndicate and consummate the debt financing contemplated in connection with the Transaction on the terms and subject to the conditions described in the Debt Commitment Letter and/or Debt Facility Agreement (“**Bidder Financing**”), including but not limited to the following:

(i) furnishing the Bidder and its financing sources with the Required Financial Information and promptly (or as soon as such information is available) furnishing reasonable supporting details in support thereof;

(ii) cooperating with the marketing efforts of the Bidder and its financing sources for any and all portions of such financing, including:

(A) participation in (and causing senior management, with appropriate seniority and expertise as agreed by Costa, to participate in) a reasonable number of:

(aa) general bank meetings;

(bb) one-on-one meetings with prospective financing sources,

which may be in person or by telephone/video conference, upon reasonable notice being provided; and

(cc) lender presentations, due diligence sessions and other customary syndication activities; and

(B) providing timely feedback on any customary marketing materials prepared by Bidder and its financing sources (including information memoranda, lender presentations and other documents customarily used to syndicate financing similar to those contemplated in the Debt Commitment Letter and/or Debt Facility Agreement);

(iii) cooperating with the efforts of the Bidder and its financing sources to ensure that any syndication efforts benefit from the existing lending and investment banking relationships of the Costa Group;

(iv) obtaining any prepayment and/or cancellation notices and procuring, upon written request of the Bidder, draft deeds of release, payoff and/or discharge letters and any other certificates and/or documents as applicable in relation to the

Existing Facility Agreement, any hedging or treasury transactions or any other financial indebtedness which are agreed with the Bidder to be repaid and/or closed out (as the case may be) on the Implementation Date and request that to the extent necessary, relevant credit or hedge counterparties, agents or security trustees, agents or third parties (as applicable) execute the same prior to the Implementation Date; and

(ii) assisting in the repayment and/or replacement (on a back-to-back or otherwise) of contingent letters of credit, bank guarantees or other similar financial instruments issued under the Existing Facility Agreement or any other financial arrangements of the Costa Group (for the avoidance of doubt, but without prejudice to the operation of this clause, it is the Bidder's responsibility to procure availability of the replacement credit support such as back-to-back instruments);

(b) Costa must provide all documentation and other information required under any applicable “know your customer” and anti-money laundering rules and regulations as required to satisfy the conditions in the Debt Commitment Letter, in each case to the extent requested in writing by the Bidder or its Representatives for or on behalf of its financing sources; and

(c) Costa must procure that each relevant member of the Costa Group consents to the use of its logos in connection with such financing, provided that such logos are used solely in a manner that is not intended or reasonably likely to harm or disparage Costa or any member of the Costa Group or their respective reputations, goodwill or trade marks,

provided that:

(d) Bidder must indemnify and reimburse Costa, any member of the Costa Group and their Representatives (as appropriate) upon written demand for any losses suffered and any and all reasonable and documented out-of-pocket costs and expenses incurred by Costa, any member of the Costa Group and their Representatives (as appropriate) in compliance with the requirements of this clause [illegible];

(e) nothing in this clause will require Costa or any Costa Group member or any of their respective Representatives to:

(i) take any action that may unreasonably interfere with the ongoing business or operations of the Costa Group (having regard to, among other things, the reasonableness of the notice given by Bidder or its financing sources of any requested assistance or cooperation) or with their Representatives performing their ordinary duties in connection with the conduct of the Costa Group's business;

(ii) provide any information in breach of any obligation of confidentiality to any person, breach any law, any applicable legal professional privilege or take any other action that would reasonably be expected to breach any law or any contractual or equitable obligation; and

(iii) execute prior to the Implementation Date any credit or facility agreement, pledge or security document, or other certificate, legal opinion or document in connection with the Bidder financing (other than customary release, repayment and/or cancellation documents to effect repayment and/or cancellation [illegible] the Existing Facility Agreement and Encumbrances securing those facilities prior to or on the Implementation Date and transaction banking facilities or such other financial arrangements of the Costa Group as may be agreed between Costa and Bidder).

Bidder acknowledges and agrees that any information provided under this clause [illegible] to Bidder or its Representatives will be at the sole risk of Bidder and none of the Costa Group members or their Representatives will have any liability in connection with any access, information or assistance provided under this clause [illegible].

6 Costa Board recommendation and intentions

6.1 Costa Board recommendation

Costa must use its best endeavours to procure that:

(a) the Costa Board states in the Scheme Booklet:

(i) that the Costa Board unanimously considers the Scheme to be in the best interests of Costa Shareholders (other than Excluded Shareholders) and recommends that Costa Shareholders (other than Excluded Shareholders) approve the Scheme Resolution in the absence of a Superior Proposal (**Recommendation**) and does not change (including by attaching any qualifications to) or withdraw the Recommendation once made; and

(ii) the Voting Intention; and

(b) the Costa Board does not make any public statement or any statement to brokers, analysts, journalists, Costa Shareholders or professional or institutional investors to the effect that the Scheme is no longer so considered or recommended,

unless:

(c) either:

(i) there is a Superior Proposal; or

(ii) the Independent Expert concludes that the Scheme is not in the best interests of Costa Shareholders (other than Excluded Shareholders) (or adversely changes its previously given opinion that the Scheme is in the best interests of Costa Shareholders (other than Excluded Shareholders)); and

(d) the Costa Board determines, in good faith having received expert advice in writing from its legal adviser (who must be reputable advisers experienced in transactions of this nature), that they must do so because of their fiduciary or statutory duties to Costa Shareholders.

7 Directors and employees

7.1 Release of Costa and Costa directors and officers

Subject to the Corporations Act, Bidder releases its rights, and agrees with Costa that it will not make a claim, against any Costa Indemnified Party (other than

Costa and its Related Bodies Corporate as at the date of this document and from time to time in connection with:

(a) any breach of any representations and warranties of Costa or any other member of Costa Group in this document; or

(b) any disclosures made by any Costa Indemnified Party containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Costa Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits Bidder's rights to terminate this document under clause [illegible].

7.2 Benefit for Costa Indemnified Parties

Costa receives and holds the benefit of clause 7.1 to the extent it relates to each Costa Indemnified Party on behalf of each of them.

7.3 Release of Bidder and Bidder directors and officers

Subject to the Corporations Act, Costa releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party (other than Bidder) as at the date of this document and from time to time in connection with:

(a) any breach of any representations and warranties of Bidder in this document; or

(b) any disclosures made by any Bidder Indemnified Party containing any statement which is false or misleading whether in content or by omission,

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. Nothing in this clause 7.3 limits Costa's rights to terminate this document under clause [illegible].

7.4 Benefit for Bidder Indemnified Parties

Bidder receives and holds the benefit of clause 7.3 to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

7.5 Appointment/retirement of Costa directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Trust Account and receipt by Costa of signed consents to act, Costa must use its reasonable endeavours to:

(a) cause the appointment of each Incoming Director to the Costa Board and, to the extent applicable and requested by Bidder, the boards of each member of the Costa Group; and

(b) procure that each of the Outgoing Directors retire from the Costa Board and, to the extent applicable, the boards of each member of the Costa Group,

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

7.6 Directors' and officers' insurance

(a) Subject to the Scheme becoming Effective and implementation of the Transaction occurring, and subject to the Corporations Act, Bidder undertakes in favour of Costa and each other person who is a Costa Indemnified Party that it will:

(1) for a period of 7 years from the Implementation Date, ensure that the constitutions of Costa and each other member of the Costa Group continue to contain such rules as are contained in those constitutions at the date of this document 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 member of the Costa Group; and

(2) procure that Costa and each other member of the Costa Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover placed pursuant to clause 7.6(b) is maintained for a period of 7 years from the retirement date of each director and officer.

(b) Bidder acknowledges that, notwithstanding any other provision of this document, Costa may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such 7 year period referred to in clause 7.6(a)(2), which may include cover for securities class actions against Costa or any Costa director or officer (**D&O Run-off Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not of themselves be a Material Adverse Effect or Costa Prescribed Event or a breach of any provision of this document, or give rise to any right to terminate this document, and will be disregarded when assessing the operation of any other part of this document, provided that:

(1) Costa must use reasonable endeavours to obtain the most attractive commercial terms for the D&O Run-off Policy available from a reputable insurer on terms no less favourable than Costa's directors and officers liability insurance policy in force at the date of this document (and will be deemed to have satisfied this requirement by following the recommendations of a reputable insurance broker); and

(2) subject to any confidentiality obligations, Costa must keep Bidder informed of all material progress in relation to the D&O Run-off Policy and consult in good faith with Bidder in relation to the applicable D&O Run-off Policy prior to securing the relevant policy.

7.7 Period of undertaking

The undertakings contained in clause 7.6 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Costa Group ceasing to be part of the Bidder Group.

7.8 Benefit of undertaking for Costa Group

Costa acknowledges that it receives and holds the benefit of clause 7.6, to the extent it relates to each director and officer of a member of the Costa Group, on behalf of each of them.

8 Conduct of business

8.1 Overview

From the date of this document until and including the Implementation Date, Costa must and must procure each member of the Costa Group to conduct its businesses in the ordinary course and in substantially the same manner (subject to any applicable laws, regulations and Regulatory Approvals) as previously conducted in the 12 months prior to the date of this document and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals.

8.2 Specific obligations

Without limiting clause 8.1, Costa must and must procure each member of the Costa Group to, during the period contemplated by clause 8.1, ensure that:

(a) **(business and assets)** the Costa Group uses reasonable endeavours to maintain the condition of its businesses and assets in the ordinary course and substantially consistent (subject to any applicable law and regulation) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this document;

(b) **(officers and employees)** the Costa Group keeps available the general services provided by its directors, officers and employees;

(c) **(relationships)** the Costa Group uses reasonable endeavours to preserve its relationships with material customers, suppliers, licensors, licensees, joint venturers, Government Agencies and others with whom it has material business dealings;

(d) (**related party transaction**) no Costa Group Member enters into any transaction with any related party of Costa (as defined in section 228 of the Corporations Act) which requires Costa shareholder approval under section 208 of the Corporations Act;

(e) (**accounting policies**) the Costa Group does not change any accounting policy applied by a Member of the Costa Group to report their financial position other than any change required by a change in accounting standards;

(f) (**tax**) each Costa Group Member does not settle or compromise or make any concession in relation to any tax claim, liabilities or disputes or make any election in relation to tax, or otherwise engage in any transaction, act or event which gives rise to any tax liability which is outside the ordinary course of business as it was conducted prior to the date of this document or has been Disclosed;

(g) (**legal proceedings**) each Costa Group Member does not commence or settle any legal proceedings, claim, investigation, arbitration or other like proceedings, other than in the ordinary course of business;

(h) (**Costa Prescribed Event**) each Costa Group Member must use reasonable endeavours to procure that no Costa Prescribed Event occurs;

(i) (**financial arrangements in respect of the Transaction**) no Costa Group Member pays or agrees to pay fees to any third party adviser in connection with the transactions contemplated by this agreement including legal, financial, tax, accounting, communications and public relation to adviser, consultant and expert fees in excess of the amount [illegible] the amount Disclosed in the Disclosure Materials (in each case other than where required under this document) or where Costa receives a Competing Transaction or where a Costa Group Member has acted reasonably and in good faith incurred additional costs due to limitations or conditions imposed by Bidder);

(j) **(no default)** each Costa Group Member uses its reasonable endeavours to ensure that no act or omission occurs that would or would with the giving of notice or lapse of time constitute an event of default, termination event or any other event or give another party a termination right or right to accelerate any right or obligation under any such Material Contract; and

(k) **(agree)** no Costa Group Member agrees to do or commits to do any of the above matters.

8.3 Exceptions to conduct of business provisions

Nothing in clause 8.1 or 8.2 restricts the ability of any member of the Costa Group to take any action which:

(a) is expressly required or permitted by this document, the Scheme or otherwise required by law (and, in the case of expenditure, the expenditure incurred pursuant to, or in connection with, the Transaction);

(b) has been Disclosed in the Disclosure Materials to the Bidder; and

(c) is required 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), provided that, to the extent such action is outside the ordinary course and is reasonably practicable having regard to the nature of the relevant emergency or disaster, Costa has notified Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considered any reasonable comments or requests of Bidder in relation to such proposal in good faith, or has been agreed to in writing by Bidder (such agreement not to be unreasonably withheld or delayed).

8.4 Access to people and Costa Information

(a) Between the date of this document and the Implementation Date, Costa must, and must procure that each member of the Costa Group, responds to reasonable requests from Bidder and its Representatives for information concerning the Costa Group's financial position and performance, businesses and operations and provide Bidder and its Representatives with reasonable access to Costa's Representatives and documents, records and other information (subject to any existing confidentiality obligations owed to third parties or applicable privacy laws) and otherwise provide reasonable co-operation to Bidder and its Representatives, in each case for the purposes of:

(1) the implementation of the Scheme;

(2) the integration of the Costa Group and the Bidder Group following implementation of the Scheme; or

(3) any other purpose that is agreed in writing between the parties, and

(b) provided that it is in accordance with the Confidentiality Deed. The obligations in this clause 8.4 do not require Costa to:

(v) provide information to Bidder concerning the Costa directors and management's consideration of the Scheme;

(vi) provide any commercially sensitive or competitive information (other than subject to the Confidentiality Deed); or

(vii) breach any obligation of confidentiality to any person.

(c) The parties acknowledge that all information that is provided pursuant to this clause [illegible] is provided subject to the terms of the applicable Confidentiality Deed, and where information provided to Bidder under this document is regarded as 'Confidential Information' provided to Paine Schwartz Partners, LLC under the Paine Schwartz Confidentiality Deed.

9 Third party consents

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

(i) Costa and Bidder will each act reasonably to 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 jointly initiate contact with the relevant counterparties and request that they provide any consents or waivers required. Bidder and its Representatives must not contact any counterparties for this purpose without Costa being present or without Costa's prior written consent (which must not to be unreasonably withheld, conditioned or delayed);

(ii) Costa must cooperate with, and provide reasonable assistance to Bidder to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties, but nothing in this clause requires Costa or Bidder to incur material expense;

(iii) a failure by a Costa Group Member to obtain any third party consent or waiver in respect of a Change of Control Requirement will not of itself constitute or result in:

(A) a breach of this document by Costa or otherwise give rise to any right for Bidder to terminate this document;

(B) a Material Adverse Effect or Costa Prescribed Event; or

(C) any liability on behalf of Costa and Costa Indemnified Parties,

and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this document, provided that Costa complies with its obligations in this clause 9; and

(iv) Nothing in this clause requires Costa to provide, or procure the provision of, information which would constitute a breach of, or would be reasonably likely to result in a breach of, as determined the external legal counsel's written advice provided to Costa, in each case under applicable competition and/or antitrust law or regulation (including any law or regulation relating to "gun jumping").

10 Exclusivity

10.1 No existing discussions

Costa represents and warrants that, other than the discussions with Bidder or its Related Bodies Corporate in respect of the Scheme, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person.

10.2 No-shop

During the Exclusivity Period, Costa must ensure that neither it nor any of its Representatives directly or indirectly:

(a) solicits, invites, encourages or initiates any Competing Transaction or any enquiries, negotiations or discussions with any person in relation to, or that may reasonably be expected to lead to a Competing Transaction; or

(b) communicates any intention to do any of these things.

10.3 No-talk

Subject to clause [illegible], during the Exclusivity Period, Costa must ensure that neither it nor any of its Representatives:

(a) negotiates or enters into; or

(b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Costa or any of its Representatives or the person has publicly announced the Competing Transaction.

10.4 Due diligence information

Without limiting the general nature of clause [illegible] and subject to clauses [illegible] and [illegible], during the Exclusivity Period, Costa must ensure that neither it nor any of its Representatives:

(a) enables any other person other than Bidder to undertake due diligence investigations on any member of the Costa Group or their businesses or operations; or

(b) makes available to any other person, or permits any other person to receive, other than Bidder, in the course of due diligence investigations or otherwise, any non-public information relating to any member of the Costa Group or their businesses or operations.

10.5 Exceptions

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10.6 Further exceptions

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10.7 Notice of unsolicited approach

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10.8 Matching right

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undertake or give effect to an actual, proposed or potential Competing Transaction; and

(b) must use its best endeavours to procure that none of its directors change or withdraw their statement that they consider the Scheme to be in the best interests of Costa Shareholders (other than Excluded Shareholders) and/or their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Transaction or recommend against the Scheme,

unless:

(c) Costa has received a proposal from a third party in respect of an actual, proposed or potential Competing Transaction;

(d) the Costa Board acting in good faith and in order to satisfy what the Costa Board considers to be its statutory or fiduciary duties (having received written advice from its external legal adviser) determines that the Competing Transaction would be or would be reasonably likely to result in a Superior Proposal;

(e) Costa has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price (or implied value), conditions, details of consideration (amount and/or cash), conditionality, break fees (if any) and the identity of the third party making the actual, proposed or potential Competing Transaction, and if different, the bidder or acquirer (to the extent known by Costa), together with a copy of any material confidential information concerning the Costa Group's operations provided to any person associated with the Competing Transaction that has not previously been provided to Bidder;

(f) Costa has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 10.8(e) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and

(g) Bidder has not provided a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 5 Business Day period referred to in clause 10.8(f).

10.9 Bidder counterproposal

If Bidder proposes to Costa, or announces amendments to the Scheme or a new proposal that would in the opinion of the Costa Board (acting in good faith) constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (**Bidder Counterproposal**) by the expiry of the 5 Business Day period referred to in clause 10.8(f), Costa must procure that the Costa Board considers the Bidder Counterproposal and if the Costa Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Costa Shareholders (other than Excluded Shareholders) as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Bidder Counterproposal, then:

(a) Costa and Bidder must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme and Deed

P[illegible] that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and

(b) Costa must use its best endeavours to procure that each of the directors of Costa continues to recommend the Scheme (as modified by the Bidder Counterproposal) to Costa Shareholders (other than Excluded Shareholders) and not the applicable Competing Transaction.

10.10 Material Modifications of Competing Transaction

Any material modifications to any Competing Transaction (which will include any modification relating to the price or value of any Competing Transaction) will be taken to make that proposal a new Competing Transaction in respect of which Costa must comply with its obligations under clauses [illegible] and [illegible].

10.11 Costa Board determination

Despite any provision in this document, a statement by Costa or the Costa Board to the effect that:

(a) the Costa Board has determined that a Competing Transaction is a Superior Proposal and commenced the matching right process set out in clause [illegible]; or

(b) Costa Shareholders should take no action pending the completion of the matching right process set out in clause [illegible],

does not of itself:

(c) constitute a change, withdrawal or modification of the recommendation of the Costa Board or an endorsement of a Competing Transaction;

(d) contravene this document; or

(e) give rise to a termination right under clause [illegible].

10.12 Legal advice

Costa acknowledges that it has received legal advice on this document and the operation of this clause 10.

10.13 Compliance with law

If it is finally determined by a court or the Takeovers Panel that the agreement by the parties under this clause 10 (or any part of it):

(a) constituted, or constitutes, or would constitute a breach of the fiduciary or statutory duties of the Costa Board;

(b) constituted, or constitutes, or would constitute, ‘unacceptable circumstances’ within the meaning of the Corporations Act; or

(c) was, or is, or would be unlawful for any other reason,

then, to the extent determined by the court or Takeovers Panel, Costa will not be required to comply with that part of the provision of clause [illegible].

10.14 Usual provision of information

Nothing in this clause 10 prevents Costa from:

(a) providing any information to its Related Bodies Corporate;

(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 any Government Agency;

(d) providing any information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business; and

(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 or promoting the merits of the Transaction.

11 Break Fee

11.1 Background

This clause 11 has been agreed in circumstances where:

(a) Costa acknowledges that, if Bidder enters into this document and the Scheme is subsequently not implemented, Bidder will have incurred significant costs, including those set out in clause [illegible];

(b) Bidder requested that provision be made for the relevant payment outlined in this clause 11, without which Bidder would not have entered into this document;

(c) the Costa Board believes that it is appropriate to agree to the payment referred to in this clause 11 to secure Bidder's entry into this document; and

(d) Costa has received separate legal advice in relation to this document and the operation of this clause 11.

The parties acknowledge and agree that the costs actually incurred by Bidder as referred to in clause 11.1(a) will be of such nature that they cannot be accurately ascertained, but that the Break Fee is a genuine and reasonable pre-estimate of the [illegible] cost and loss that would actually be suffered by Bidder.

11.2 Payment of Break Fee

Subject to clauses [illegible] and [illegible], Costa must pay Bidder the Break Fee in accordance with clause [illegible] if any of the following events occurs:

(a) this document is validly terminated by Bidder under clause [illegible]; or

(b) any Costa director:

(1) fails to state his or her Recommendation or Voting Intention in the Public Announcement or Scheme Booklet pursuant to clauses [illegible] and [illegible] respectively;

[illegible] makes a public statement withdrawing or adversely changing, adversely qualifying or adversely modifying, or that is inconsistent with their Recommendation or Voting Intention; or

[illegible] makes a public statement supporting or endorsing a Competing Transaction,

and Bidder has terminated this document in accordance with clause [illegible] (except [illegible]); or

[illegible] where the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, the Independent Expert's Report) that the Scheme is not in the best interests of Costa Shareholders (other than Excluded Shareholders) except in circumstances where the Independent Expert reaches that conclusion wholly or partly as a result of the existence or announcement of a Competing Transaction,

provided that, for the avoidance of doubt, a statement made by Costa, the Costa Board or any Costa director to the effect that no action should be taken by Costa Shareholders pending the assessment of a Superior Proposal by the Costa Board [illegible] that statement will not provide Bidder with a right to terminate this document or require Costa to pay the Break Fee to Bidder; or

(c) during the Exclusivity Period a Competing Transaction is announced by any person and, within [illegible] months after the announcement of such Competing Transaction [illegible] that person or another person:

(i) completes a transaction of the kind referred to in paragraphs [illegible] or [illegible] of the definition of Competing Transaction; or

(ii) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, more than [illegible] of Costa Shares and that acquisition is, or becomes, unconditional.

11.3 Payment conditions

(a) Notwithstanding the occurrence of any event under clause [illegible], no amount is payable under that clause if:

(i) the Scheme becomes Effective; or

(ii) at the time that any amount became payable under clause [illegible] Costa was entitled to terminate this document under clause [illegible] and has given the appropriate termination notice to Bidder,

and [illegible] clause [illegible] any amount or part of the Break Fee that has already been paid to Bidder must be refunded by Bidder:

[illegible] where clause [illegible] applies, within [illegible] Business Days after the Scheme becomes Effective; or

[illegible] where clause [illegible] applies, within [illegible] Business Days after the date Costa notifies Bidder that at the time that the Break Fee became payable under this clause [illegible] Costa was entitled to terminate this document under clause [illegible].

(b) Without limiting clause [illegible]:

(ii) Costa can only ever be liable to pay the Break Fee once; and

(iii) Where the Break Fee becomes payable to Bidder under this clause [illegible] and is actually paid to Bidder, Bidder cannot make any claim against Costa for payment of the Break Fee.

11.4 Timing of payment

If the Break Fee is payable under this clause [illegible], Costa must pay the Break Fee without set-off or withholding (except as required by law) within [illegible] Business Days of receipt of a demand for payment from Bidder which must:

(a) be in writing (for which purpose email shall suffice);

(b) be made after the occurrence of the event in that clause giving rise to the right to the payment of the Break Fee;

(c) state the circumstances which give rise to the demand; and

(d) nominate the account into which Costa is to pay the Break Fee.

11.5 Nature of payment

The amount payable by Costa to Bidder under clause [illegible] is an amount to compensate Bidder for:

(a) advisory costs (including costs of advisers other than success fees);

(b) costs of management and directors' time;

(c) out-of-pocket expenses; and

(d) reasonable opportunity costs incurred by Bidder in pursuing the Transaction, including the significant disruption to its existing business and diversion of board and management time and focus from its existing business, or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further its business and objectives,

incurred by Bidder.

11.6 Reduction in amount payable

(a) The Break Fee is reduced by an amount equal to the amount which is recovered by Bidder as a result of a claim against Costa pursuant to any other remedy available to Bidder under this document including pursuant to clause [illegible].

(b) Where the Break Fee has already been paid to Bidder, Bidder must, within [illegible] Business Days of the event contemplated by clause [illegible] which would have reduced the amount payable, refund an amount to Costa which is equivalent to that calculated under clause [illegible].

11.7 Compliance with law

(a) This clause [illegible] imposes obligations on Costa only to the extent that the performance of all or part of those obligations:

(i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and

(ii) is not determined to be unenforceable or unlawful (including as a result of any part of those obligations being a breach of any of the fiduciary or statutory duties of any Costa director) by a court of competent jurisdiction;

(b) If:

(i) clause 11.7(a)(i) or clause 11.7(a)(ii) applies; and

(ii) the Takeovers Panel or a court of competent jurisdiction has finally determined that an amount lower than the Break Fee does not constitute an unacceptable circumstance or is not unenforceable or a breach (as applicable) (an applicable "**Permitted Break Fee Amount**"),

then:

(iii) Costa shall be required to pay the Permitted Break Fee Amount in accordance with clause 11.2; and

(iv) if the Break Fee has already been paid to Bidder, Bidder must refund an amount equal to the difference between the Break Fee and the Permitted Break Fee Amount to Costa within 10 Business Days after receipt of a written demand from Costa.

(c) The parties 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 of a kind referred to in clause 11.7(b)(ii).

11.8 Costa's limitation of liability

(a) Despite anything to the contrary in this document, but subject to clauses 11.8(b) and 11.8(c), the maximum aggregate amount that Costa (and the Costa Group) is required to pay to Bidder in relation to or under this document (including as a result of any breach of this document by Costa) is the amount of the Break Fee and in no event will the aggregate liability of Costa (and the Costa Group) under this document or in connection with the Transaction or the Scheme (including but not limited to any and all claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature and however arising) in connection with this document exceed the amount of the Break Fee.

(b) Where the Break Fee is paid by Costa to Bidder in accordance with this document (or the Break Fee would be payable if Bidder made a written demand under clause 11.2):

(i) subject to clause 11.8(c), Bidder cannot make any claim against Costa or their Representatives under or in connection with this document; and

(ii) Costa has no further liability to Bidder (or any Bidder Group Member) under or in connection with this document, the Transaction or the Scheme (including but not limited to any and all claims, actions, damages, losses, liabilities, costs, expenses or payments of whatever nature and however arising) in connection with this document, the Transaction or the Scheme.

(c) Clauses 11.8(a) and 11.8(b) do not apply in respect of any fraud, wilful misconduct, wilful breach or wilful concealment by or on behalf of Costa.

(d) Nothing in this clause [illegible] or otherwise under this document entitles Bidder to [illegible] a court [illegible] for specific performance or injunctive relief.

12 Reverse Break Fee

12.1 Background

This clause has been agreed to in circumstances where:

(a) Bidder acknowledges that, if Costa enters into this document and the Scheme is subsequently not implemented, Costa will have incurred significant costs including those set out in clause [illegible];

(b) Costa requested that provision be made for the relevant payment outlined in this clause [illegible], without which Costa would not have entered into this document;

(c) Bidder believes that it is appropriate to agree to the payment referred to in this clause [illegible] to secure Costa's participation in the Scheme; and

(d) Bidder has received legal advice in relation to this document and the operation of this clause [illegible].

The parties acknowledge and agree that the costs actually incurred by Costa as referred to in clause [illegible] will be of such a nature that they cannot be accurately ascertained, but that the Reverse Break Fee is a genuine and reasonable pre-estimate of the [illegible] cost and loss that would actually be suffered by Costa.

12.2 Payment by Bidder to Costa

Subject to clauses [illegible] and [illegible], Bidder must pay the Reverse Break Fee to Costa in accordance with clause [illegible] if any of the following events occur:

(a) **material breach**: Costa validly terminates this document in accordance with clause [illegible]; or

(b) **failure to pay Scheme Consideration**: Bidder does not pay the aggregate Scheme Consideration in accordance with the terms and conditions of this document.

12.3 Payment conditions

(a) Notwithstanding the occurrence of any event under clause [illegible], [illegible] is payable under that clause:

(i) if the Scheme becomes Effective; or

(ii) if at the time that an amount became payable under clause [illegible], Bidder was entitled to terminate this document under clause [illegible] and has given the appropriate termination notice to Costa,

and this clause [illegible] will apply such that any amount or part of the Reverse Break Fee that has already been paid to Costa must be refunded by Costa.

(iii) where clause [illegible] applies, within [illegible] Business Days after the Scheme becomes Effective; or

(iv) where clause [illegible] applies, within [illegible] Business Days after the date Bidder notifies Costa that at the time that the Reverse Break Fee became payable under this clause [illegible] Bidder was entitled to terminate this document under clause [illegible].

(b) Without limiting clause [illegible]:

(i) Bidder can only ever be liable to pay the Reverse Break Fee once; and

(ii) where the Reverse Break Fee becomes payable to Costa under this clause [illegible] and is actually paid to Costa, Costa cannot make any claim against Bidder for payment of the Reverse Break Fee.

12.4 Timing of payment

(a) If the Reverse Break Fee is payable under this clause [illegible], Bidder must pay the Reverse Break Fee without set-off or withholding (unless required by law) within [illegible] Business Days of receipt of a demand for payment from Costa, which must:

(i) be in writing (for which purposes email shall suffice);

(ii) be made after the occurrence of the event in that clause [illegible] giving rise to the right to the payment of the Reverse Break Fee;

(iii) state the circumstances which give rise to the demand; and

(iv) nominate an account in the name of Costa into which Bidder must pay the Reverse Break Fee.

12.5 Nature of payment

The amount payable by Bidder to Costa under clause [illegible] is an amount to compensate Costa for:

(a) advisory costs (including costs of advisers other than success fees);

(b) costs of management and directors' time;

(c) out-of-pocket expenses; and

(d) reasonable opportunity costs incurred by Costa in pursuing the Transaction (including the significant disruption to the entity's business and diversion of board and management time and focus from the entity's business) or in not pursuing strategic initiatives or alternative transactions which Costa could have developed or participated in to further its business and objectives),

incurred by Costa.

12.6 Reduction in amount payable

(a) The Reverse Break Fee is reduced by an amount equal to the amount which is recovered by Costa as a result of a claim against Bidder pursuant to any other remedy available to Costa under this document including pursuant to clause [illegible].

(b) Where the Reverse Break Fee has already been paid, Costa must, within [illegible] Business Days of the event contemplated in clause [illegible] which would have reduced the amount payable, refund an amount to Bidder which is equivalent to that calculated under clause [illegible].

12.7 Compliance with law

(a) This clause [illegible] imposes obligations on Bidder only to the extent that the performance of all or part of those obligations:

(1) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and

(2) is not determined to be unenforceable or unlawful (including as a result of all or part of those obligations being a breach of any of the fiduciary or statutory duties of any Bidder director) by a court of competent jurisdiction.

(b) If clause [illegible] or clause [illegible] has applied and:

(1) the Takeovers Panel or a court of competent jurisdiction has authoritatively determined that an amount lower than the Reverse Break Fee does not constitute unacceptable circumstances or is not unenforceable or a breach (as applicable) (as applicable, the **Permitted Reverse Break Fee Amount**),

then:

(2) Bidder shall be required to pay the Permitted Reverse Break Fee Amount in accordance with clause [illegible]; and

(3) if the Reverse Break Fee has already been paid to Costa, Costa must refund an amount equal to the difference between the Reverse Break Fee and the Permitted Reverse Break Fee Amount to Bidder within [illegible] Business Days after receipt of a written demand from Bidder.

(c) The parties 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 of a kind referred to in clause [illegible].

12.8 Bidder's limitation of liability

(a) Despite anything to the contrary in this document but subject to clauses [illegible] and [illegible], the maximum aggregate amount that Bidder (and Bidder Group) is required to pay to Costa in relation to or under this document (including as a result of any breach of this document by Bidder) is the amount of the Reverse Break Fee and in no event will the aggregate liability of Bidder (and Bidder Group) under this document or in connection with the Transaction or the Scheme (including but not limited to in tort and any claim for damages, losses, liabilities, costs, expenses or payments of whatever nature and however arising in connection with this document) exceed the amount of the Reverse Break Fee.

(b) Where the Reverse Break Fee is paid by Bidder to Costa in accordance with this document (or the Reverse Break Fee would be payable if Costa made a written demand under clause [illegible])

(ii) Subject to clause 12.2(d), Costa cannot make any claim against Holder or their Representatives under or in connection with this document; and

(iii) Holder has no further liability to Costa or any Costa Group Member under or in connection with this document, the Transaction or the Scheme, including but not limited to for any claim, action, damage, liability, cost, expense or payment of whatever nature and however arising in connection with this document, the Transaction or the Scheme.

(c) Clauses 12.1(a) and 12.2(d) do not apply in respect of fraud, wilful misconduct, wilful breach or wilful concealment by or on behalf of Holder.

(d) Nothing in this clause 12 or otherwise under this document limits:

(i) Holder's liability to Scheme Participants under the Deed Poll; or

(ii) Costa or a Scheme Participant's ability to apply to a court for claims for specific performance or injunctive relief.

13 Representations and warranties

13.1 Costa's representations and warranties

Subject to clause [illegible], Costa represents and warrants to Holder (on its own behalf and separately as trustee or nominee for each of the Holder directors) that each of the following statements is true and correct:

(a) as at the date of this document:

(i) (**Disclosure Materials**) the Disclosure Materials and all other information Disclosed by Costa to Holder in connection with this document (whether under due diligence or not):

(A) have been collated and prepared in good faith in response to Holder's requests for due diligence information in respect of the Costa Group before the date of this document with reasonable diligence, care and skill having regard to the purpose for which it was collated;

(B) so far as Costa Group is aware, are not misleading or deceptive (including by omission) in any material respect as at the date of this document; and

(C) Costa has not intentionally omitted or withheld from the Disclosure Materials any information which would reasonably be expected to be material to a reasonable and sophisticated potential investor evaluating the Costa Group and the material activities of the Costa Group;

(ii) **(no default)** neither Costa nor any entity it controls is in material default under any Material Contract, nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation under any such Material Contract with such an effect;

(viii) **(reasonable assumptions)** to the extent the Disclosure Materials include forward looking statements, those forward looking statements are based on assumptions which Costa believes (as at the date the information was provided and continues to believe) to be reasonable; and

(ix) **(opinions)** any statement of opinion or belief contained in the Disclosure Materials is honestly held and there are reasonable grounds for holding the opinion or belief; and

(x) **(securities)** Costa's securities on issue that are shares in Costa or convertible into shares in Costa are as follows:

(A) [illegible] fully paid ordinary shares; and

(B) [illegible] options or rights to subscribe for Costa Shares.

(b) at the date of this document, the First Court Date, the Scheme Meeting and 8:00am on the Second Court Date:

(a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;

(b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;

(c) **(no contravention)** the entry into it into, its compliance with its obligations and the exercise of its rights under this document do not and will not conflict with:

(A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or

(B) in any material respect with any law binding on or applicable to it or its assets;

(d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it and to allow them to be enforced;

(e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;

(f) **(Insolvency event)** no member of the Costa Group is Insolvent;

(g) **(securities – Costa Group)** Other than as Disclosed in the Disclosure Materials:

(A) all the issued securities in each member of the Costa Group (other than Costa) are held either by Costa or another member of the Costa Group that is directly or indirectly wholly owned by Costa; and

(B) no member of the Costa Group has issued or granted (or agreed to issue or grant) any other securities or instruments which are still outstanding and may convert into securities in the relevant member of the Costa Group (other than Costa) and in respect of Costa shares to be issued on the vesting and conversion of Employee Share Rights or on exercise of options over pre-IPO options that will result in the issuance of C class shares that will automatically convert into Costa Shares);

(viii) (**No obligations to issue**) no member of the Costa Group (other than Costa, but only in respect of Costa Shares to be issued on the vesting and conversion of Employee Share Rights or in respect of the Costa Shares that will be issued on exercise of options over pre-IPO options that will result in the issuance of C class shares and automatically convert into Costa Shares) is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any other securities (shares, options, warrants, performance rights, convertible notes, instruments or rights) in a member of the Costa Group (member other than Costa, but only in respect of Costa Shares to be issued on the vesting and conversion of Employee Share Rights or in respect of the Costa Shares that will be issued on exercise of options over pre-IPO options that will result in the issuance of C class shares and automatically convert into Costa Shares) to a third party;

(ix) **(compliance)** the Costa Group has complied in all material respects with all Australian and foreign laws (including Tax laws) and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licences, permits and franchises necessary for it to conduct its respective businesses as presently being conducted;

(x) **(no Encumbrances)** there are no material Encumbrances over all or any of its assets or revenues;

(xi) **(anti-bribery and corruption)** during the [illegible] year period prior to the date of this document, to the Costa Group's knowledge, no member of Costa Group, nor any of the officers, directors or employees, agents, intermediaries, representatives or joint venture partners of any member of the Costa Group has directly or indirectly in connection with the business of the Costa Group:

(A) requested, received, made, offered, authorised, solicited or promised to make or offer any bribe, illegal payment, gift, pay or transfer of anything of value or advantage to or for the benefit of any person, including any government official, candidate for public office, political party or political campaign;

(B) requested, received, paid, offered or promised to make or offer any bribe, payment, influence payment, kickback, loan, rebate or other similar unlawful payment of any nature;

(C) requested, received, made, offered or promised to make or offer any unlawful contributions, including political or charitable contributions, gifts, entertainment or other unlawful expenditures;

(D) established or maintained any unlawful fund of corporate monies or other properties;

(E) created or caused the creation of any false or inaccurate books and records of any member of the Costa Group related to any of the foregoing;

(F) otherwise directly or indirectly violated any applicable international anti-corruption or anti-bribery laws (including the US Foreign Corrupt Practices Act 1977 (as amended) and the UK Bribery Act 2010 (as applicable to the Costa Group)); or

(G) has sold or purchased goods or services from, or otherwise engaged in any such transactions with any person in a Sanctioned Country and no such sales, purchases or other transactions are pending or have any outstanding obligations involving any person in a Sanctioned Country;

[illegible] **(sanctioned person)** during the three year period to the date of this document, to the Costa Group's knowledge, the Costa Group (including any employee, current or former director or officer) of any member of the Costa Group has not undertaken any act in breach of any sanctions or been located, organised or resident in a Sanctioned Country;

[illegible] **(disputes)** other than the Matters Disclosed in the Disclosure Materials:

(A) no material litigation, prosecution, arbitration, mediation or other like proceedings (other than any investigation by a Government Agency); and

(B) so far as Costa Group is aware, no investigation by a Government Agency,

relating to the Costa Group has been commenced in the three years prior to the date of this document that is outstanding as at the date of this document and would reasonably be likely to have a material adverse impact on the operations, financial performance or the reputation of the Costa Group;

[illegible] **(continuous disclosure)** other than the making of the Public Announcement, Costa: Costa is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transactions contemplated by this document);

[illegible] **(elections and Tax claims)** Costa (or any other member of the Costa Group) has not and has not settled or compromised or made any concessions in relation to any material Tax claims or liabilities or disputes or made any elections in relation to Tax or otherwise engaged in any transaction, act or event which gives rise to any Tax liability which is outside the ordinary course of business as it was conducted prior to the date of this document; and

[illegible] **(financial statements)** so far as Costa is aware, there has not been any material event, change, effect or development that would require Costa to restate Costa's financial statements as disclosed to ASX;

[illegible] **(regulatory engagement)** neither ASIC nor ASX has made a determination against any Costa Group Member for any contraventions of the requirements of the Corporations Act or the ASX Listing Rules or any relevant regulations or regulatory guides under the Corporations Act or the ASX Listing Rules;

(c) on the First Court Date, as at the date of the Scheme Booklet and [illegible] on the Second Court Date:

(i) **(reliance)** the Costa Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of determining to proceed with the Transaction, considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;

(ii) **(Costa Information)** the Costa Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

(iii) **(provision of information to Independent Expert)** all information provided by or on behalf of Costa to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report;

(iv) **(reasonable assumptions)** to the extent Costa Information includes forward looking statements, those forward looking statements are based on assumptions which Costa believes, as at the date the information was provided and continues to believe, to be reasonable; and

(v) **(opinions)** any statement of opinion or belief contained in the Costa Information is honestly held and there are reasonable grounds for holding the opinion or belief.

13.2 Qualifications on Costa's representations and warranties

The representations and warranties made or given by Costa in clause [illegible] are each subject to and qualified by matters that:

(a) have been Disclosed in the Disclosure Materials;

(b) have been Disclosed in an announcement by Costa to ASX, or a publicly available document lodged by it with ASIC prior to the date of this document; or

(i) the PPS Register on [illegible] September [illegible]

(ii) the registry of the New South Wales Land Registry Services on [illegible] June [illegible]

[illegible] the Victorian Land Titles Office [illegible] June [illegible];

[illegible] the registry of the High Court [illegible] June [illegible];

[illegible] the registries of the Federal Court and the Federal Circuit Court [illegible] June [illegible];

[illegible] the registry of the Supreme Court of New South Wales [illegible] June [illegible];

[illegible] the registry of the Supreme Court of Queensland [illegible] June [illegible];

[illegible] the registry of the Supreme Court of Western Australia [illegible] June [illegible];

[illegible] the registry of the Supreme Court of Victoria [illegible] June [illegible];

[illegible] the registry of the Supreme Court of South Australia [illegible] June [illegible];

[illegible] the registry of the Supreme Court of the Australian Capital Territory [illegible] June [illegible];

[illegible] the registry of the Supreme Court of Tasmania [illegible] June [illegible]; or

[illegible] IP Australia [illegible] June [illegible];

(c) are expressly required or permitted by this document or the Scheme;

(d) are required by any applicable law or regulation; or

(e) are within the actual knowledge of Bidder on or before the date of this document.

13.3 Bidder's representations and warranties

Bidder represents and warrants to Costa (on its own behalf and separately on behalf of each of the Costa directors) that each of the following statements is true and correct:

(a) as at the date of this document, the First Court Date, the Scheme Meeting and [illegible] on the Second Court Date:

[illegible] **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;

[illegible] **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;

[illegible] **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:

(A) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or

(B) in any material respect with any law binding on or applicable to it or its assets;

(iv) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it and to allow them to be enforced;

(v) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;

(vi) **(Insolvency event)** no member of the Bidder Group is Insolvent;

(vii) **(compliance)** the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and in connection with the Transaction, including having obtained FIRB Approval or advice from an Australian law firm that FIRB Approval is not required in connection with the acquisition by Bidder of all the Shares in Costa that it does not currently own;

(b) at the First Court Date, as at the date of the Scheme Booklet and as at 8.00am on Second Court Date:

(i) **(reliance)** the Bidder Information provided to Costa for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Costa and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;

(ii) **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

(iii) **(provision of information to Independent Expert)** all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;

(iv) **(reasonable assumptions)** to the extent Bidder Information includes forward looking statements, those forward looking statements are based on assumptions which Bidder believes, as at the date the information was provided and continues to believe, to be reasonable;

(v) **(opinions)** any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;

(vi) **(no dealing with Costa Shareholders)** other than in respect of the Excluded Shareholders, neither it nor any of its associates has any agreement, arrangement or understanding with any Costa Shareholder under which that Costa Shareholder (or an associate of that Costa Shareholder) would be entitled to receive consideration for their Costa Shares different from the Scheme Consideration or under which the Costa Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction.

(c) on the date of this document, the date of the Scheme Meeting and 8.00am on the Second Court Date:

(1) **(reasonable basis)** it has a reasonable basis to expect that it will, on the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;

(2) **(Commitment Letters)** Bidder has given to Costa true, correct and complete copies (other than to the extent any commercially sensitive material has been redacted) of the Equity Commitment Letter and the Debt Commitment Letter;

(3) **(due execution and enforceability of the Commitment Letters)** each of the Equity Commitment Letter and the Debt Commitment Letter has been duly executed by each party to it and constitute legally binding obligations of those parties that are enforceable in accordance with their terms;

(4) **(no termination of Commitment Letters)** neither the Equity Commitment Letter nor the Debt Commitment Letter has been terminated;

(5) **(Debt Facility Agreement)** Bidder has a reasonable basis to expect that it will be able to agree the Debt Facility Agreement on terms that are acceptable having regard to the nature, scope and activities of the business of Bidder and the Costa Group, and it is not aware of any matter which would reasonably lead it to expect that a condition precedent to drawdown under the Debt Facility will not be fulfilled which would, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this document, the Scheme and Deed Poll;

(6) **(no amendment of Debt Facility Agreement)** on each date from the date on which a Debt Facility Agreement is entered into until 8.00am on the Second Court Date, that Debt Facility Agreement has been duly executed by Bidder and constitutes legally binding and enforceable obligations on, and rights of, Bidder that are enforceable in accordance with its terms, and without Costa's prior written consent, Bidder will not amend or agree to amend that Debt Facility Agreement in any respect which would, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this document, the Scheme and Deed Poll; and

(d) **(unconditional cash reserves on the Second Court Date and the Implementation Date)** by 8.00am on the Second Court Date and on the Implementation Date, Bidder will have available to it on an unconditional basis (other than, on the Second Court Date, conditions relating to the approval of the Court and other conditions within the sole control of Bidder, sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll.

13.4 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 document, except for representations or inducements expressly set out in this document 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 document, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.

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

13.5 Survival of representations and warranties

Each representation and warranty in clauses [illegible] and [illegible]:

(a) is severable;

(b) survives the termination of this document; 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 document.

13.6 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes a material breach of any of the representations or warranties given by it under clauses [illegible] and [illegible].

14 Termination

14.1 Termination events

This document may be terminated:

(a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;

(b) **(lack of support)** by Bidder at any time prior to 8.00am on the Second Court Date if any member of the Costa Board changes, qualifies or attaches any qualifications to, or withdraws their statement that they consider the Scheme to be in the best interests of Costa Shareholders (other than Excluded Shareholders) or their recommendation to the Costa Shareholders (other than Excluded Shareholders) that they vote in favour of the resolution to approve the Scheme or their voting intentions (including any adverse modification to its recommendation, statement or voting intentions) or otherwise makes a public statement indicating that it no longer supports the Scheme;

(c) **material breach**: by either Bidder or Costa at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that (except where Bidder is the terminating party in the case of a material breach by Costa), Bidder or Costa (as the case may be) has given notice to the other setting out the relevant circumstances and stating an intention to terminate this document and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;

(d) **Competing Transaction**: by Costa at any time prior to 8.00am on the Second Court Date if:

(1) the Costa Board determines that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of clause [illegible] is a Superior Proposal, provided that Costa has complied with its obligations under clause [illegible] (including the matching right process set out in clause [illegible]); or

(2) the Independent Expert provides a report to Costa (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) that concludes that the Scheme is not in the best interests of Costa Shareholders (other than Excluded Shareholders), and:

(A) the Costa Board or a majority of the Costa Board changes, withdraws or modifies, or qualifies their recommendation as a result; or

(B) if this conclusion in the Independent Expert's Report has been determined by the Independent Expert based on a Competing Transaction, after Costa has complied with its obligations under clause [illegible] (including the matching right process set out in clause [illegible]);

(e) **consultation or appeal failure**: in accordance with and pursuant to:

(1) clause [illegible];

(2) clause [illegible]; or

(3) clause [illegible]; or

(f) **(agreement)** if agreed to in writing by Bidder and Costa.

14.2 Termination

Where a party has a right to terminate this document, 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 document.

14.3 Effect of Termination

If this document is terminated by either party or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses [illegible], will immediately cease to be of further force and effect without further liability of any party to the other, provided that

Nothing in this clause releases any party from liability for any pre-termination breach of this document.

14.4 Damages

In addition to the right of termination under clause 14.1, where there is no appropriate remedy for the breach of this document (other than termination), the non-defaulting party is entitled to damages for losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

15 Public announcements

15.1 Public announcement of Scheme

Immediately after signing this document, Costa and Bidder must issue a joint public announcement of the proposed Scheme in the form contained in Annexure A (the **Public Announcement**) which must be released by Bidder no earlier than such time at which Costa's announcement has been released to ASX.

15.2 Required disclosure

Where a party is required by applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours to the extent possible to consult with the other party prior to making the relevant disclosure.

15.3 Other announcements

Subject to clauses 15.1 and 15.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party must use all reasonable endeavours to provide such approval as soon as practicable.

16 Confidential Information

16.1 Disclosure of Confidential Information

Each party acknowledges and agrees that Costa and the respective counterparties to the Confidentiality Deed continue to be bound by the Confidentiality Deed after the date of this document with information provided by Costa to Bidder to be treated as 'Confidential Information' under the Confidentiality Deed. The rights and obligations of the respective parties under the Confidentiality Deed survive termination of this document.

17 Notices and other communications

17.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

Any communication (other than email communication) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

All communications from Costa to Paine Schwartz Partners, LLC and its advisers will be treated as notifications and communications to Bidder under this document.

17.2 Delivery

Communications must be:

(a) left at the address referred to in the Details;

(b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or

(c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

17.3 When effective

Communications take effect from the time they are received or taken to be received under clause 17.4 (whichever happens first) unless a later time is specified in the communication.

17.4 When taken to be received

Communications are taken to be received:

(a) if sent by post, 3 Business Days after posting (or 10 days after posting if sent from one country to another); or

(b) if sent by email:

(i) when the sender receives an automated message confirming delivery; or

(ii) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; or

(iii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

17.5 Receipt outside business hours

Despite anything else in this clause 17, if communications are received or taken to be received under clause 17.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

18 GST

18.1 Definitions and interpretation

For the purposes of this clause:

(a) **"GST"** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

(b) "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

(c) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and

(d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

18.2 GST exclusive

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

18.3 Payment of GST

(a) If GST is payable on a supply made under or in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").

(b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST exclusive consideration for the supply, or the first part of the GST exclusive consideration for the supply (as the case may be), is payable or is to be provided.

(c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse charge.

18.4 Adjustment events

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

18.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credit which the other party (or the representative member of a GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 18.3 will apply to the reduced payment.

18.6 Survival

This clause 18 will survive completion and continue to apply after expiration or termination of this document.

19 Costs, duty and withholding

19.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for any Costs covered by clause 19.2.

19.2 Stamp duty

Bidder:

(a) agrees to pay or reimburse all stamp duty and other Taxes payable or assessed as being payable in connection with this document or the Scheme (including any fees, fines, penalties and interest in connection with any of those amounts); and

(b) indemnifies Costa against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 19.2(a).

Bidder agrees to pay amounts due to Costa under this clause within 5 Business Days of demand from Bidder.

19.3 Foreign resident capital gains withholding

(a) If Bidder is required to make a withholding or deduction for payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 to the TAA (**Subdivision 14-D**)) to any Government Agency (**Withheld Amount**) in respect of the acquisition of Costa Shares from the Scheme Participant, Bidder:

(i) must pay or procure the payment of the amount of the withholding or deduction (or make or procure the making of the payment) to the appropriate Government Agency under applicable law; and

(ii) will not be required to pay any additional amount to a Scheme Participant on account of the Withheld Amount and the payment of the Scheme Consideration less the Withheld Amount will be deemed for all purposes to have paid the full and final amount of the Scheme Consideration or other payments required under this document.

(b) Bidder acknowledges and agrees that it must not withhold or deduct any Subdivision 14-D amounts under clause 19.3(a) with respect to a Scheme Participant where Bidder receives a Scheme Participant Declaration from the Scheme Participant prior to the Implementation Date and, if the Implementation Date is more than six months after the date of this document, a further Scheme Participant Declaration (provided, in each case that Bidder does not know any Scheme Participant Declaration to be false).

(c) Costa 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 in making any such approach.

(d) Bidder agrees:

(i) that it must approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and to use reasonable endeavours to reach an agreement with the ATO to mitigate the withholding required under Subdivision 14-D and, where possible, reduce the circumstances where a Scheme Participant is required to provide a Scheme Participant Declaration;

(ii) to provide Costa a reasonable opportunity to review the form and content of all materials to be provided to the ATO and must incorporate Costa's reasonable comments on those materials, and more generally take into account Costa's comments in relation to Bidder's engagement with the ATO, and provide Costa a reasonable opportunity to participate in all discussions and correspondence between Bidder and the ATO in connection with the application of Subdivision 14-D to the Scheme; and

(iii) not to contact any Costa Shareholders in connection with the application of Subdivision 14-D to the Scheme without Costa's prior written consent.

(e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO (if any) and any process described in clause 19.3(c). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable (including following that consultation which may include making amendments to this document, the Scheme and the Deed Poll) to ensure that relevant representations are obtained from Costa Shareholders.

19.4 Costa Withholding

Costa must withhold any amount required by law to be withheld from the Permitted Dividend (and any other dividend declared or determined by the Costa Board).

20 General

20.1 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

20.2 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

20.3 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

20.4 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

20.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

20.6 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

20.7 Indemnities and reimbursement obligations

Any indemnity or reimbursement obligation in this document:

(a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;

(b) is independent of any other obligations under this document; and

(c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

20.8 Inconsistent law

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

20.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party’s rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

20.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

20.11 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

20.12 Further steps

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the other party asks and considers necessary to:

(a) bind the party and any other person intended to be bound under this document; or

(b) show whether the party is complying with this document.

20.13 No liability for loss

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

20.14 Severability

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

20.15 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

20.16 Assignment

(a) Subject to paragraph (b), a party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.

(b) The rights under this document may be assigned, novated or otherwise dealt with by the Bidder to any financier (or any person or persons as trustee or agent for that financier) of the Bidder or a Bidder Group Member from time to time in connection with the Debt Facility Agreement provided that Bidder is at all times responsible to satisfy its obligations under this document (including in relation to the payment of Scheme Consideration).

20.17 Enforceability

For the purposes of this document:

(a) Costa is taken to be acting as agent and trustee on behalf of and for the benefit of all Costa Indemnified Parties; and

(b) Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

20.18 No representation or reliance

Each party acknowledges that:

(a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;

(b) it does not enter into this document 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 document; and

(c) clauses [illegible] and [illegible] above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

21 Governing law

21.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

21.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause [illegible].

EXECUTED as an agreement

Schedule [illegible] Timetable (clause [illegible])

Event	Date
Lodge Scheme Booklet with ASIC and ASX	[illegible]
Application in respect of the Court hearing to be held on the First Court Date filed with the Court served on ASIC	[illegible]
First Court Date	[illegible]
Printing and despatch of Scheme Booklet	[illegible]
Scheme Meeting held	[illegible]
Second Court Date	[illegible]
Lodge Court Order with ASIC (Effective Date)	[illegible]
Record Date	[illegible]
Implementation Date	[illegible]

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DATED: ______________________

EXECUTED □□ COSTA GROUP HOLDINGS LIMITED (ACN 151 363 129) □ acc□rda□ce □th □ect□□ □□□□□ □□ the *Corporations Act 2001* □Cth□□ a□th□r□t□ □□□t□ d□rect□r□□

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Execution page

DATED: ______________________

EXECUTED by CHILLI BUYER PTY LTD (ACN 670 569 678) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

____
Signature of director

[redacted]
____
Name of director (block letters)

____
Signature of director

[redacted]
____
Name of director (block letters)

Scheme Implementation Agreement

Annexure A Public announcement

[Attached]

Scheme Implementation Agreement

Annexure [illegible] Scheme of Arrangement

![King & Wood Mallesons logo]

Scheme of Arrangement

Dated□

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Scheme of Arrangement

Contents

Scheme of Arrangement

Details

Parties

Costa	Name	**Costa Group Holdings Limited**
	ACN	[illegible]
	Address	[illegible]
	Email	[redacted]
	Attention	[redacted]
Scheme Participants	Each person who is registered as a holder of fully paid ordinary shares in Costa as at the Record Date (other than an Excluded Shareholder).	
Governing law	New South Wales, Australia	

Recitals

A Costa and Ch[illegible] Pty Ltd (ACN [illegible]) ("**Bidder**") have agreed by executing the Scheme Implementation Agreement to implement the terms of this document.

B This document imposes obligations on Bidder that Bidder has agreed to but does not impose an obligation on Bidder to perform those obligations.

C Bidder has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this document.

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intent appears these meanings apply:

ACCC means the Australian Competition and Consumer Commission.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited or the market operated by it, as the context requires.

Bidder Group means Bidder and its Related Bodies Corporate.

Business Day means a day that is each of the following:

(a) a Business Day as defined in the Listing Rules;

(b) a day that banks are open for business in New York, United States; and

(c) a day that banks are open for business in Victoria, British Columbia,

provided that a reference to a Business Day in relation to (or in the context of) a date referenced in the Timetable (other than in respect of the Implementation Date) will have the meaning given to it in paragraph (a) of this definition.

CHESS means the clearing house electronic subregister system of share transfers operated by ASX Settlement and Transfer Corporation Pty Ltd.

Constitution means the constitution of Costa, as amended from time to time.

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

Costa Board means the board of directors of Costa.

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

Costa Shareholder means each person registered in the Register as a holder of Costa Shares.

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed in writing by Bidder and Costa.

Deed Poll means the deed poll executed by Bidder substantially in the form of Annexure C of the Scheme Implementation Agreement or as otherwise agreed by Bidder and Costa under which Bidder covenants in favour of each Scheme Participant to perform the actions attributed to Bidder under this Scheme.

Details means the section of this document headed “Details”.

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

not in any event at any time before an office copy of the order of the Court is lodged with ASIC.

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

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

End Date means the "End Date" determined in accordance with the Scheme Implementation Agreement.

Excluded Shareholders means:

(a) Citibank N.A. Hong Kong Branch – Agency & Trust in respect of the ordinary shares in Costa held on behalf of Australian [illegible] Holdings [illegible] which as at the date of this document is [illegible] ordinary shares;

(b) [illegible] Pty Limited (ACN [illegible]) in respect of the ordinary shares in Costa held on behalf of Driscoll's Inc, which as at the date of this document is [illegible] ordinary shares; and

(c) any Costa Shareholder who is a member of the Bidder Group or any Costa Shareholder who holds any Costa Shares on behalf of, or for the benefit of, any member of the Bidder Group and does not hold Costa Shares on behalf of, or for the benefit of, any other person, in each case as at the Record Date.

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), 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.

Immediately Available Funds means immediate electronic funds transfer or other form of cleared funds acceptable to Costa.

Implementation Date has the meaning given in the Timetable.

Listing Rules means the official Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

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

Record Date has the meaning given in the Timetable.

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

Registered Address means, in relation to a Costa Shareholder, the address shown in the Register as at the Record Date.

Registry means Link Market Services Limited (ACN [illegible]).

Regulatory Authority means:

(a) ASX, ACCC, ASIC and the Takeovers Panel;

(b) a Government Agency;

(c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and

(d) any regulatory organisation established under statute.

Related Body Corporate has the meaning given in the Scheme Implementation Agreement.

Scheme means this scheme of arrangement between Costa and Scheme Participants under which all the Scheme Shares will be transferred to Bidder under Part [illegible] of the Corporations Act as described in clause [illegible] of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section [illegible] of the Corporations Act to the extent they are approved in writing by Costa and Bidder in accordance with this Scheme.

Scheme Consideration means the consideration payable by Bidder for the transfer of Costa Shares held by a Scheme Participant to Bidder, being in respect of each Costa Share:

(a) a cash amount [illegible]; *less*

(b) the cash amount of any dividend declared or determined by the Costa Board (whether franked or otherwise) and paid by Costa to Costa Shareholders between the date of this document and the Implementation Date.

Scheme Implementation Agreement means the scheme implementation agreement dated [illegible] September [illegible] between Costa and Bidder under which, amongst other things, Costa has agreed to propose this Scheme to Costa Shareholders (other than Excluded Shareholders), and each of Bidder and Costa has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting of Costa Shareholders ordered by the Court to be convened pursuant to section [illegible] of the Corporations Act at which Costa Shareholders will vote on this Scheme.

Scheme Participant means each person who is a Costa Shareholder at the Record Date (other than an Excluded Shareholder).

Scheme Share means a Costa Share held by a Scheme Participant as at the Record Date and, for the avoidance of doubt, includes any Costa Shares issued on or before the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section [illegible] of the Corporations Act approving the Scheme and is to occur on the date set out in the Timetable.

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

Separate Account has the meaning given in clause [illegible].

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

Tax means any tax, levy, impost, deduction or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Timetable has the meaning given in the Scheme Implementation Agreement.

Trust Account means an Australian dollar denominated trust account held with an Australian bank operated by Contact or by the Registry on behalf of Contact to hold the Scheme Consideration on trust for the purposes of paying the Scheme Consideration to the Scheme Participants in accordance with clause [illegible] of this Scheme.

Unclaimed Money Act means the *Unclaimed Money Act 1995 No 75* (NSW).

Withholding Amount has the meaning given in clause [illegible].

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

(a) the singular includes the plural and vice versa;

(b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);

(c) a reference to a document also includes any variation, replacement or novation of it;

(d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;

(e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and any authority or any other entity or organisation;

(f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(g) a reference to a time of day is a reference to Sydney or Melbourne time;

(h) a reference to dollars or A$ is a reference to the currency of Australia;

(i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);

(j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;

(k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);

(l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;

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2 Preliminary

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2.2 Bidder

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2.3 If Scheme becomes Effective

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3 Conditions precedent

3.1 Conditions precedent to Scheme

This Scheme is conditional and will have no force or effect until the satisfaction of each of the following conditions precedent:

(a) as at [illegible] on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;

(b) all of the conditions precedent in clause [illegible] of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent that cannot be waived in accordance with the terms of the Scheme Implementation Agreement) [illegible] by [illegible] on the Second Court Date;

(c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section [illegible] of the Corporations Act, and if applicable, Costa and Bidder having accepted in writing any modification or condition made or required by the Court under section [illegible] of the Corporations Act;

(d) subject to clause [illegible], such other conditions made or required by the Court under section [illegible] of the Corporations Act in relation to this Scheme and agreed to by Bidder and Costa having been satisfied or waived; and

(e) the coming into effect, pursuant to section [illegible] of the Corporations Act, of the orders of the Court made under section [illegible] of the Corporations Act (and, if applicable, section [illegible] of the Corporations Act) in relation to this Scheme on or before the End Date (or any later date Costa and Bidder agree in writing in accordance with the Scheme Implementation Agreement).

3.2 Conditions precedent and operation of clause 5

The satisfaction of each condition of clause [illegible] of this Scheme is a condition precedent to the operation of clause 5 of this Scheme (other than in respect of clause [illegible] of this Scheme [illegible] the conditions precedent in clause [illegible] of this Scheme).

3.3 Certificate in relation to conditions precedent

Before [illegible] on the Second Court Date, each of Costa and Bidder must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge and included for that party's benefit or for which that party is responsible and cannot be waived) whether or not the conditions precedent set out in clause [illegible] and clause [illegible] of this Scheme have been satisfied or waived.

The certificate referred to in this clause [illegible] constitutes conclusive evidence (in the absence of manifest error) of whether the conditions precedent referred to in clause [illegible] and clause [illegible] of this Scheme have been satisfied or waived as at [illegible] on the Second Court Date.

4 Scheme

4.1 Effective Date

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

4.2 End Date

(a) Without limiting any other rights of Bidder and/or Costa under the Scheme Implementation Agreement, unless Costa and Bidder otherwise agree in writing, this Scheme will lapse and be of no further force or effect if:

[illegible] the Effective Date does not occur on or before the End Date or any later date Costa and Bidder agree in writing in accordance with the Scheme Implementation Agreement; or

[illegible] the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with their terms before the Scheme becomes Effective.

[illegible] Without limiting any rights under the Scheme Implementation Agreement, if the Scheme Implementation Agreement is terminated in accordance with its terms before [illegible] on the Second Court Date, Costa and Bidder are each released from:

[illegible] any further obligation to take steps to implement the Scheme; and

[illegible] any liability with respect to this Scheme.

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause [illegible] of this Scheme (other than the condition precedent in clause [illegible] of this Scheme) are satisfied, Costa must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event not later than [illegible] on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder and Costa agree in writing.

5.2 Transfer and registration of Scheme Shares

Subject to the Scheme becoming Effective, on the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clauses [illegible] of this Scheme and Bidder having provided Costa with written confirmation of the provision of those funds:

(a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Costa as attorney and agent for Scheme Participants under clause [illegible] of this Scheme) by:

[illegible] Costa delivering to Bidder a duly completed and executed share scheme transfer to transfer all of the Scheme Shares to Bidder, which may take the form of a master transfer executed by behalf of the Scheme Participants, by Costa (or any of its officers), as agent and attorney of the Scheme Participants; and

(iii) Bidder duly executing the Share Scheme Transfer, attending to the stamping of the Share Scheme Transfer (if required) and delivering the Share Scheme Transfer to Costa for registration; and

(b) immediately following receipt of the duly executed Share Scheme Transfer, but subject to any legislative requirement for a transaction confirming the Scheme to first be assessed for stamp duty, Costa must enter, or procure the entry of, the name of Bidder in the Register in respect of all of the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Bidder of all of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause [illegible] of this Scheme.

5.4 Title and rights in Costa Shares

(a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause [illegible] of this Scheme, and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Costa of Bidder in the Register as the holder of the Scheme Shares.

(b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.

5.5 Scheme Participants' agreements

Under this Scheme, each Scheme Participant:

(a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;

(b) agrees to the variation, cancellation or modification of the rights attached to its Costa Shares constituted by or resulting from the Scheme;

(c) agrees to, on the direction of Bidder, destroy any holding statements or share certificates relating to its Costa Shares;

(d) who holds its Costa Shares in a CHESS Holding (as defined in the Settlement Rules) agrees to the conversion of those Costa Shares to an Issuer Sponsored Holding (as defined in the Settlement Rules) and irrevocably authorises Bidder to do anything necessary, expedient or incidental (whether required by the Settlement Rules or otherwise) to effect or facilitate that conversion;

(e) acknowledges that this Scheme binds Costa and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at the Scheme Meeting or vote against the Scheme at the Scheme

Meeting, and to the extent of any inconsistency and to the extent permitted by law, override the Constitution; and

([illegible]) irrevocably consents to Costa and Bidder doing all other things and executing all other documents as may be necessary or incidental to or expedient to the implementation and performance of this Scheme.

5.6 Warranty by Scheme Participants

Each Scheme Participant warrants to Bidder and is deemed to have authorised Costa to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

(a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under the Scheme will, at the date of the transfer of them to Bidder, be fully paid and free from all Encumbrances or any other third party interest or restriction on transfer of any kind; and

(b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme.

5.7 Transfer free of Encumbrances

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

5.8 Appointment of Bidder as sole proxy

Immediately upon the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 5.3 of this Scheme, and from the Implementation Date until Costa registers Bidder as the holder of all of the Costa Shares in the Register, each Scheme Participant:

(a) irrevocably appoints Costa as attorney and agent (and directs Costa in such capacity) to appoint Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy and, where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Costa Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)); and

(b) must take all other actions in the capacity of the registered holder of Costa Shares as Bidder directs.

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

6 Scheme Consideration

6.1 Consideration under the Scheme

On the Implementation Date, Costa must procure Bidder to provide or procure the provision of the Scheme Consideration to the Scheme Participants in accordance with clauses [illegible] and [illegible] of this Scheme.

6.2 Satisfaction of obligations

Subject to clause [illegible], the obligations of Costa to procure payment of the Scheme Consideration pursuant to clause [illegible] of this Scheme will be satisfied by Costa procuring Bidder, no later than the Business Day before the Implementation Date to deposit or procure the deposit in Immediately Available Funds of the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account).

6.3 Payment of Scheme Consideration

(a) On the Implementation Date, subject to receipt of the funds from Bidder in accordance with clause [illegible] of this Scheme, Costa must pay to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to Bidder less any applicable Withholding Amount, on the Implementation Date by that Scheme Participant from the Trust Account.

(b) The obligations of Costa under clause [illegible] will be satisfied by Costa (in its absolute discretion, and despite any election referred to in clause [illegible] or authority referred to in clause [illegible] made or given by the Scheme Participant):

(i) paying, or procuring the payment of, the relevant amount in A$ by electronic means to a bank account nominated by the Scheme Participant where the Scheme Participant has made a valid election prior to the Record Date in accordance with the requirements of the Registry to receive dividend payments from Costa to that bank account;

(ii) paying, or procuring the payment of, the relevant amount in A$ by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to Costa; or

(iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank for the relevant amount in A$ to each Scheme Participant by prepaid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by prepaid airmail) to their address recorded in the Register on the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause [illegible]).

(c) If:

(i) a Scheme Participant does not have a Registered Address and no account has been notified in accordance with clause [illegible] or a deposit into such account is rejected or refunded; or

(ii) a cheque issued under this clause [illegible] has been cancelled in accordance with clause [illegible], Costa as the trustee for the Scheme Participant, may credit the amount payable to the relevant Scheme Participant to a separate bank account of Costa ("**Separate Account**") to be held until the Scheme Participant claims the amount or the amount is dealt with under the Unclaimed Money Act. If the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Participant claims the amount or the amount is dealt with under the Unclaimed Money Act. Until such time as the amount is dealt with under the Unclaimed Money Act, Costa must hold the amount on trust for the relevant Scheme Participant, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the relevant Scheme Participant when credited to the Separate Account or Trust Account (as applicable). Costa must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

(d) If, following satisfaction of Costa's obligations under clause [illegible], there is a surplus in the amount held by Costa as trustee for the Scheme Participants in the Trust Account, that surplus must be paid by Costa to Bidder.

(e) If the Scheme lapses after Bidder has provided some or all of the Scheme Consideration in accordance with clause [illegible] but prior to Bidder being entered into the Register as the holder of the Scheme Shares in accordance with clause [illegible], Costa must refund (or procure the refund) to Bidder of the amount deposited into the Trust Account in accordance with clause [illegible] together with any interest thereon (less any bank fees and charges).

6.4 Unclaimed monies

(a) Costa may cancel a cheque issued under clause [illegible] of this Scheme if the cheque:

(i) is returned to Costa; 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 one year commencing on the Implementation Date, on request from a Scheme Participant, Costa must reissue a cheque that was previously cancelled under this clause [illegible].

(c) The Unclaimed Money Act will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section [illegible] of the Unclaimed Money Act). Any interest or other benefit accruing from the unclaimed Scheme Consideration will be to the benefit of Bidder.

6.5 Fractional entitlements and splitting

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest whole cent.

6.6 Orders of a court or Regulatory Authority

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6.7 Joint holders

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7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

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7.2 Register

Costa must register, or cause to be registered, all registrable transmission applications or transfers of the Scheme Shares received in accordance with clause [illegible] of this Scheme on or before the Record Date.

7.3 No disposals after Effective Date

(a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever and Costa will be entitled to disregard any such disposal or dealing.

(b) Costa will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title).

7.4 Maintenance of Costa Register

For the purpose of determining entitlements to the Scheme Consideration, Costa will maintain the Register in accordance with the provisions of this clause [illegible] until the Scheme Consideration has been paid to the Scheme Participants and Bidder has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration and each entry on the Register as at the Record Date will be evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

7.5 Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to Bidder contemplated in clauses [illegible] and [illegible] of this Scheme, all statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of any Excluded Shareholder, Bidder and its successors in title). After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of any Excluded Shareholder, Bidder or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

7.6 Details of Scheme Participants

Within [illegible] Business Days after the Record Date, Costa will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant as shown in the Register at the Record Date are available to Bidder in such form as Bidder reasonably requires.

7.7 Quotation of Costa Shares

Costa must apply to ASX to suspend trading on ASX in Costa Shares with effect from the close of trading on the Effective Date.

7.8 Termination of quotation of Costa Shares

After the Scheme has been fully implemented, Costa will apply:

(a) for termination of the official quotation of Costa Shares on ASX; and

(c) to have been removed from the official list of the ASX.

8 Appointment of Costa as attorney for implementation of Scheme

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

(a) executing any document or doing or taking any other act necessary, desirable or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering any Share Scheme Transfer; and

(b) on and from the Effective Date, enforcing the Deed Poll against Bidder, and Costa undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against Bidder on behalf of and as agent and attorney for each Scheme Participant,

and Costa accepts such appointment. Costa as attorney and agent of each Scheme Participant, may sub-delegate any of its functions, authorities or powers under this clause to all or any of its directors or officers (jointly, severally, or jointly and severally).

9 Appointment of Bidder as attorney in respect of Scheme Shares

Immediately upon the provision of the Scheme Consideration to each Scheme Participant in the manner contemplated by clause [illegible] and until Bidder is registered as the holder of all Scheme Shares, each Scheme Participant:

(a) irrevocably appoints Bidder as its agent and attorney (and irrevocably appoints Bidder as its agent and attorney to appoint any of the directors and officers nominated by Bidder as its agent and attorney) to:

(i) appoint the chair of the board of directors of Costa and/or where applicable a corporate representative to attend Costa Shareholders' meetings;

(ii) exercise the votes attaching to Costa Shares registered in the name of the Scheme Participant; and

(iii) sign any Costa Shareholders' resolution;

(b) must not attend or vote at any Costa Shareholders' meetings or sign any Costa Shareholders' resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause [illegible]; and

(c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs.

10 Notices

10.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Costa, 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 Costa's registered office or at the office of the Registry.

10.2 Accidental omission

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Costa Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

11 General

11.1 Variations, alterations and conditions

(a) Costa may, with the prior consent of Bidder, by its counsel or solicitor consent on behalf of all persons concerned to those variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

(b) Each Scheme Participant agrees to any such variations, alterations or conditions which Costa has consented to.

11.2 Further action by Costa

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

11.3 Authority and acknowledgement

Each of the Scheme Participants irrevocably consents to Costa and Bidder doing all things necessary or expedient for or incidental to the implementation of this Scheme.

11.4 No liability when acting in good faith

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

11.5 Enforcement of Deed Poll

Costa undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

11.6 Stamp duty

Bidder will:

(a) any stamp duty (including any fines, penalties and interest) payable in connection with this Scheme or the transactions effected by or made under the Scheme; and

(b) indemnify each Scheme Participant against any liability arising from failure to comply with clause [illegible],

subject to and in accordance with clause [illegible] of the Deed Poll.

11.7 Withholding tax

If Bidder is required to make any withholding or deduction for or payment to or on account of Tax (including under Subdivision 14-D Schedule 1 of the TAA) or to any Government Agency in respect of the acquisition of Costa Shares from the Scheme Participant (**Withholding Amount**), Bidder:

(a) must pay or procure the payment of the total amount of the withholding or deduction or make or procure the making of the payment to the appropriate Government Agency under applicable law; and

(b) will not be required to pay any additional amount to a Scheme Participant on account of the Withholding Amount and any payment of the Scheme Consideration less the Withholding Amount will be deemed for all purposes to have paid the total amount of the Scheme Consideration or other payment required under this document.

12 Governing law

12.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

12.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

Scheme Implementation Agreement

Annexure C Deed Poll

King & Wood Mallesons
金杜律师事务所

Execution version

Deed Poll

Dated:

Given by Chilli Buyer Pty Ltd (ACN 670 569 678) (“**Bidder**”)

In favour of each registered holder of fully paid ordinary shares in Costa Group Holdings Limited (ACN 151 363 129) (“**Costa**”) as at the Record Date (“**Scheme Participants**”)

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Deed Poll
Contents

Deed Poll

Details

Parties		
Bidder	Name	**Chilli Buyer Pty Ltd**
	ACN	670 569 678
	Address	c-/ Deutsche Bank Place, Level 4, 126-130 Phillip Street, Sydney, New South Wales 2000
	Email	[redacted]
	Copy to	[redacted]
	Attention	[redacted]
In favour of	Each registered holder of fully paid ordinary shares in Costa as at the Record Date (other than an Excluded Shareholder).	
Governing law	New South Wales, Australia	
Recitals	**A**	The directors of Costa have resolved that Costa should propose the Scheme.
	B	The effect of the Scheme will be that all Scheme Shares will be transferred to Bidder.
	C	Costa and Bidder have entered into the Scheme Implementation Agreement.
	D	In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to provide (or procure the provision of) an amount at least equal to the Scheme Consideration to the Trust Account in accordance with the Scheme, subject to the satisfaction of certain conditions.
	E	Bidder is entering into this deed poll for the purpose of undertaking in favour of Scheme Participants to perform its obligations under the Scheme.

Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Scheme means the proposed scheme of arrangement between Costa and Scheme Participants under which all the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this document, or as otherwise agreed by Bidder and Costa, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Costa and Bidder in accordance with clause 11 of the Scheme.

Scheme Implementation Agreement means the scheme implementation agreement dated 22 September 2023 between Costa and Bidder under which, amongst other things, Costa has agreed to propose the Scheme to Costa Shareholders (other than Excluded Shareholders), and each of Bidder and Costa has agreed to take certain steps to give effect to the Scheme.

Scheme Shares means all Costa Shares held by the Scheme Participants.

All other words and phrases used in this document have the same meaning as given to them in the Scheme.

1.2 General interpretation

Clause 1.2 of the Scheme applies to this document.

1.3 Nature of deed poll

Bidder acknowledges that:

(a) this document may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and

(b) under the Scheme, each Scheme Participant irrevocably appoints Costa and each of its directors, officers and secretaries (jointly and individually) as its agent and attorney to enforce this deed against Bidder.

2 Condition precedent and termination

2.1 Condition precedent

The obligations of Bidder under this document are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Bidder under this document will automatically terminate and the terms of this document will be of no further force or effect if:

(a) the Scheme has not become Effective on or before the End Date or any later date as the Court, with the consent of the Bidder and Costa, may order; or

(b) the Scheme Implementation Agreement is terminated in accordance with its terms; or

(c) the Scheme terminates and ceases to be of any force or effect in accordance with its terms,

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

2.3 Consequences of termination

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

(a) Bidder is released from its obligations to further perform this document except those obligations contained in clause 6.2 and any other obligations which by their nature survive termination; and

(b) each Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this document which occurs before it is terminated.

3 Performance of obligations generally

(a) Subject to clause 2, Bidder covenants in favour of each Scheme Participant that it will be bound by the terms of the Scheme as if it were a party to the Scheme and undertakes to perform all obligations and other actions, including those obligations and actions which relate to the payment or procuring the payment of the Scheme Consideration, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme Implementation Agreement and the Scheme.

(b) The obligations of Bidder under clause 3(a) will be satisfied if, in respect of the Scheme Consideration, Bidder deposits, no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Participants who are entitled to the Scheme Consideration under the Scheme in cleared funds to the Trust Account, in accordance with, and subject to, the provisions of the Scheme, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account.

4 Representations and warranties

Bidder represents and warrants that:

(a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;

(b) (**power**) it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;

(c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:

(i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; and

(ii) in any material respects with any law binding on or applicable to it or its assets;

(d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;

(e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and

(f) **(solvency)** it is not Insolvent.

5 Continuing obligations

This document is irrevocable and, subject to clause 2 of this document, remains in full force and effect until:

(a) Bidder has fully performed its obligations under this document; or

(b) the earlier termination of this document under clause 2.2 of this document.

6 Costs

6.1 Costs

Bidder agrees to pay all costs in respect of the implementation of the Scheme (including, in connection with the transfer of Costa Shares to Bidder in accordance with the terms of the Scheme).

6.2 Stamp duty and registration fees

Bidder:

(a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document (including any fees, fines, penalties, indemnities and interest in connection with any of these amounts); and

(b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it, for any liability arising from, or in connection with, any failure to comply with clause 6.2(a) on demand.

7 Notices and other communications

7.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing. They must be sent to the address or email addresses referred to in the Details and (except in the case of email) signed by the sender (if an individual) or an authorised officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the intended recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

7.2 Delivery

Communications must be:

(a) left at the address referred to in the Details;

(b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or

(c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

7.3 When effective

Communications take effect from the time they are received or taken to be received under clause 7.4 (whichever happens first) unless a later time is specified in the communication.

7.4 When taken to be received

Communications are taken to be received:

(a) If sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); or

(b) if sent by email:

(i) when the sender receives an automated message confirming delivery;

(ii) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; or

(iii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

7.5 Receipt outside business hours

Despite anything else in this clause 7, if communications are received or taken to be received under clause 7.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

8 General

8.1 Variation

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

(a) if before the First Court Date, the variation is agreed to by Costa and Bidder in writing (which such agreement may be given or withheld without reference to or approval by any Scheme Participant); and

(b) if the variation occurs on or after the First Court Date (as that term is defined in the Scheme Implementation Agreement), the variation is agreed to by Costa and Bidder in writing (which such agreement may be given or withheld without reference to or approval by any Scheme Participant) and the Court indicates (either at the hearing on the First Court Date, at an interlocutory hearing or the hearing on the Second Court Date) that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Bidder must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

8.2 Partial exercising of rights

Unless this document expressly states otherwise, if Bidder does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

8.3 No waiver

A provision of this document, or any right, power or remedy created under it may not be varied or waived except in writing signed by the party to be bound.

No failure to exercise, nor any delay in exercising, any right, power or remedy by Bidder or by any Scheme Participant operates as a waiver. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy.

8.4 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

8.5 Assignment or other dealings

The Bidder and each Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Bidder and Costa.

8.6 Further steps

Bidder agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Participant), at its own expense necessary or expedient to give full effect to this document and the transactions contemplated by it.

8.7 Withholding tax

If Bidder is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 of the TAA or by any Government Agency) in respect of the acquisition of Costa Shares from the Scheme Participants (**Withholding Amount**), Bidder:

(a) must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Government Agency under applicable law; and

(b) will not be required to pay any additional amount to a Scheme Participant on account of the Withholding Amount and, on payment of the Scheme Consideration less the Withholding Amount, will be deemed for all purposes to have paid the full and final amount of the Scheme Consideration (or other payment) required under this document.

9 Governing law and jurisdiction

9.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. Bidder submits to the non-exclusive jurisdiction of the courts of that place.

9.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder by being delivered or left at Bidder's address set out in the Details, provided that a copy of the document (or details of it) must also be sent by email to the email address set out in the Details.

EXECUTED as a deed poll

Deed Poll

Signing page

DATED:______________________

Executed and delivered as a Deed Poll.

EXECUTED as a deed by **CHILLI BUYER PTY LTD** in accordance with section 127 of the *Corporations Act 2001* (Cth) by authority of its directors:	)	
.... Signature of director	)	.... Signature of director
.... Name of director (block letters)	)	.... Name of director (block letters)

Deed Poll

Annexure A - Scheme

[Attached]