



ASX Announcement/Press Release | 27 September 2024
TPC Consolidated Limited (ASX:TPC)

Further Extension to Sunset Date and Amendment to Scheme Implementation Agreement

TPC Consolidated Limited (**ASX:TPC**) ("**TPC**" or "**Company**") refers to its Scheme Implementation Agreement ("**SIA**") with a subsidiary of Beijing Energy International (Australia) Holding Pty Ltd, Wollar Solar Holding Pty Ltd ("**WSH**"), under which WSH proposes to acquire TPC by way of a scheme of arrangement as detailed in TPC's ASX announcements dated 28 March 2024 and 30 July 2024.

TPC and WSH have agreed to further amend the SIA, to extend the Sunset Date from 15 October 2024, as WSH is still awaiting a decision from FIRB. The parties have agreed to extend the Sunset Date to 15 December 2024 for the condition precedent requiring WSH to receive FIRB approval, and to extend the Sunset Date to 31 May 2025 for all of the other conditions precedent to the scheme. Due to the extension to the Sunset Date, the parties have also agreed to some consequential changes to the SIA.

Full details of the changes are set out in the Scheme Implementation Agreement – Amendment and Restatement Agreement, a copy of which is attached to this ASX announcement as an Annexure.

If FIRB approval is not received by 15 December 2024 or any other condition precedent to the scheme is not satisfied by 31 May 2025 and the parties cannot agree on how to proceed with the transaction, the SIA may still be terminated in accordance with its terms.

At this stage, shareholders do not need to take any action.

This announcement is authorised for release by the Board of Directors of TPC Consolidated Limited.

For further information, contact as below:

TPC Consolidated
Jeffrey Ma
Company Secretary
M: +61 (2) 9009 6888
E: jeffrey.ma@tpc.com.au

Media & Investor Enquiries
The Capital Network
Julia Maguire
M: +61 2 8999 3699
E: julia@thecapitalnetwork.com.au



About TPC Consolidated

TPC Consolidated Limited (ASX:TPC) owns and operates leading Australian-based electricity and gas retailer CovaU (pronounced “cover you”), which offers competitively priced products to household as well as business (Small Medium enterprises and Commercial and Industrial) customers.

The client base of TPC’s CovaU business, spread across most Australian states and territories, can choose from a wide range of products, from conventional gas and electricity through to solar, wind and ‘greenpower’ plans.

TPC is focussed on further expanding CovaU’s market presence in the energy segment of the Australian utilities sector. The Company’s expansion plans include additions to its current suite of renewables segment-related energy products, as consumers preference energy sources that accelerate the decarbonisation process.

To learn more, please visit:
www.tpc.com.au
www.covau.com.au

ENDS

For personal use only



Annexure – Scheme Implementation Agreement – Amendment and Restatement Agreement

For personal use only

Scheme Implementation Agreement – Second Amendment and Restatement Agreement

This Agreement is made on 27 September 2024

Parties

- 1 **Wollar Solar Holding Pty Ltd** (ACN 641 036 080) of Suite 3, Level 21, 1 York Street, Sydney NSW 2000 (*Bidder*).
- 2 **TPC Consolidated Limited** (ACN 073 079 268) of Suite 29.05, Level 29, 225 George Street, Sydney NSW 2000 (*Target*).

Recitals

- A The parties to this Agreement are parties to a Scheme Implementation Agreement (the **SIA**) dated 28 March 2024, as amended and restated on 30 July 2024.
- B The parties have agreed to further amend and restate the SIA in the manner set out in this Agreement.

It is agreed as follows.

1 Definitions

- (a) Words which are defined in the SIA have the same meaning in this Agreement unless the context requires otherwise.
- (b) The provisions of clause 1.2 of the SIA form part of this Agreement as if set out at length in this Agreement, with any references to 'this Agreement' in those provisions to be interpreted as a reference to this Agreement.

2 Amendment and restatement

2.1 Amendment

The parties agree that the SIA is amended with effect on and from the date of this Agreement (the **Amendment Date**) by:

- (a) inserting the words and figures that are underscored by adding new clauses or provisions;
- (b) deleting the words and figures that are struck-out; and
- (c) otherwise amending existing clauses or provisions by inserting the words and figures shown in underscored text or deleting the words and figures shown that are struck-out,

as the case may be and in the manner set out in Annexure 1, with the effect that the SIA is amended and restated with effect on the Amendment Date to read in the manner as set out in Annexure 1, with such amendments made.

2.2 Effect of amendment

- (a) Except as expressly amended and restated by this Agreement, no changes to the SIA are to be inferred or implied, and in all other respects the SIA remains in full force and effect.
- (b) Clause 2.1 does not affect any right or obligation of either party that arises before the Amendment Date.
- (c) With effect on and from the Amendment Date, the SIA will be read and construed as amended and restated by this Agreement including Annexure 1.

3 Governing law

This Agreement is governed by the laws of New South Wales.

4 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

For personal use only

Annexure 1

For personal use only

Wollar Solar Holding Pty Ltd

TPC Consolidated Limited

Scheme Implementation Agreement

Allens
Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia

T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

For personal use only

Contents

1	Definitions and Interpretation	58
1.1	Definitions	58
1.2	Interpretations	1649
1.3	Business Day	1649
1.4	Best and reasonable endeavours	1720
1.5	Consents or approvals	1720
1.6	Knowledge, belief or awareness of Target	1720
1.7	Listing requirements included as law	1720
2	Agreement to Proceed with Scheme	1720
2.1	Target to propose the Scheme	1720
2.2	Bidder to assist	1720
3	Conditions Precedent and Pre-implementation Steps	1824
3.1	Conditions Precedent	1824
3.2	Best endeavours and co-operation	1922
3.3	FIRB Approval	1922
3.4	HKEX shareholder approval	2023
3.5	Waiver of Conditions Precedent	2124
3.6	Notifications	2124
3.7	Failure of Conditions Precedent	2225
3.8	Certificates in relation to Conditions Precedent	2326
4	Transaction Steps	2326
4.1	Scheme	2326
4.2	Note Trust Deed	2326
4.3	Scheme Consideration	2427
4.4	Provision of Initial Scheme Consideration, Nominee Cost Reserve and Earn Out Scheme Consideration	2427
4.5	Permitted Distribution and Permitted Interim Distributions	2428
4.6	Working capital facility	2529
4.7	Fractional entitlements	2529
4.8	No amendment to Scheme without consent	2629
4.9	Cash-Free Debt-Free Balance	2629
5	Implementation	2832
5.1	Target's obligations	2832
5.2	Appeal process	3034
5.3	Bidder's obligations	3134
5.4	Governance arrangements	3236
5.5	Conduct of Target Business	3336
5.6	Access to information and co-operation	3639
5.7	ATO class ruling and Earn Out Market Valuation	3640
5.8	Change of control consents	3740
5.9	Directors' and officers' insurance, access and indemnities	3844
6	Target Board recommendation	3942
6.1	Recommendation and Voting Statement	3942
6.2	Qualification of Recommendation or Voting Statement	3943
7	Representations and Warranties	4043

7.1	Bidder Representations and Warranties	4043
7.2	Target Representations and Warranties	4044
7.3	Timing of representations and warranties	4144
7.4	Survival of representations	4144
7.5	Survival of indemnities	4144
8	Releases	4145
8.1	Target Parties	4145
8.2	Bidder Parties	4145
9	Public Announcements	4245
9.1	Announcement of the Transaction	4245
9.2	Other public announcements	4245
10	Exclusivity	4246
10.1	No current discussions regarding a Competing Proposal	4246
10.2	No-shop, no talk and no due diligence	4246
10.3	Limitation to no-talk and no-due diligence	4346
10.4	Notification by Target	4346
10.5	Bidder matching right	4346
10.6	Compliance with law	4448
10.7	Normal provision of information	4548
11	Target Break Fee	4549
11.1	Background	4549
11.2	Payment of Target Break Fee	4549
11.3	Payment conditions	4650
11.4	Timing of payment	4650
11.5	Nature of payment	4650
11.6	Compliance with law	4750
11.7	Target's limitation of liability	4754
12	Reverse Break Fee	4754
12.1	Background	4754
12.2	Payment of Reverse Break Fee	4854
12.3	Payment conditions	4854
12.4	Timing of payment	4852
12.5	Nature of payment	4852
12.6	Compliance with law	4852
12.7	Bidder's Limitation of Liability	4952
12.8	Reduction in amount payable	4953
13	Termination	4953
13.1	General rights	4953
13.2	Automatic termination	5054
13.3	Effect of termination	5154
13.4	Termination by written agreement	5154
14	Confidentiality	5155
15	GST	5155
15.1	Recovery of GST	5155
15.2	Liability net of GST	5155
15.3	Adjustment events	5155
15.4	Cost exclusive of GST	5155

15.5	Survival	52 ⁵⁵
15.6	Definitions	52 ⁵⁵
16	Notices	52 ⁵⁵
17	General Provisions	53 ⁵⁶
17.1	Amendment	53 ⁵⁶
17.2	Assignment	53 ⁵⁶
17.3	Costs and stamp duty	53 ⁵⁷
17.4	Withholding	53 ⁵⁷
17.5	Counterparts	54 ⁵⁷
17.6	Entire agreement	54 ⁵⁷
17.7	Further assurances	54 ⁵⁸
17.8	Governing law	54 ⁵⁸
17.9	Arbitration	54 ⁵⁸
17.10	No merger	54 ⁵⁸
17.11	No waiver	54 ⁵⁸
17.12	Severability of provisions	54 ⁵⁸
Schedule 1		56 ⁵⁹
	Bidder Representations and Warranties	56 ⁵⁹
Schedule 2		58 ⁶⁴
	Target Representations and Warranties	58 ⁶⁴
Schedule 3		60 ⁶³
	Target Prescribed Occurrences	60 ⁶³
Schedule 4		61 ⁶⁴
	Timetable	61 ⁶⁴
Schedule 5		62 ⁶⁵
	Earn Out Scheme Consideration	62 ⁶⁵
	Annexure A – Accounting Principles	75 ⁷⁸
	Annexure B – Target P&L Statement	76 ⁷⁹
	Annexure C – CovaU P&L Statement	77 ⁸⁰
	Annexure D – iGeno P&L Statement	78 ⁸⁴
	Annexure E – Kinect P&L Statement	79 ⁸²
	Annexure F - Worked example demonstrating calculation of pro rata adjustment in in clause 2.2 of Schedule 5	80 ⁸³
	Annexure G – Power Purchase Adjustment principles	81 ⁸⁴
	Annexure H – Power Purchase Adjustment worked examples	83 ⁸⁶
	Annexure I – Form of Draft Certificate	85 ⁸⁸
	Annexure J – Form of Scheme Shareholder Nominee Deed Poll	88 ⁹⁴
Schedule 6		90 ⁹³
	Deed Poll	90 ⁹³
Schedule 7		91 ⁹⁴
	Form of Scheme	91 ⁹⁴
Schedule 8		92 ⁹⁵
	Cash-Free Debt-Free Balance	92 ⁹⁵
Schedule 9		97 ¹⁰⁰
	Note Trust Deed Principles	97 ¹⁰⁰

This Agreement is made on 28 March 2024 and was amended and restated on 30 July 2024 [and 27 September 2024](#)

Parties

- 1 **Wollar Solar Holding Pty Ltd** (ACN 641 036 080) of Suite 3, Level 21, 1 York Street, Sydney NSW 2000 (*Bidder*).
- 2 **TPC Consolidated Limited** (ACN 073 079 268) of Suite 29.05, Level 29, 225 George Street, Sydney NSW 2000 (*Target*).

Recitals

- A The parties have agreed that Bidder will acquire all of the Scheme Shares by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and its shareholders.
- B Target has agreed to propose and implement the Scheme, and Bidder has agreed to assist Target to propose and implement the Scheme, on the terms of this Agreement.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission.

Accounting Standards means:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports; and
- (b) the accounting standards approved under the Corporations Act (being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board).

Adviser means, in relation to an entity, a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

Adjustment Auditor means a chartered accountant who is a partner in a big 4 accounting firm, which firm is not, and has not in the previous 3 years been, the auditor to either the Bidder Group or the Target Group, as agreed by Target and Bidder in writing.

Adjustment Dispute Notice has the meaning given in clause 4.9(e)(ii).

Adjustment Dispute Notice Deadline has the meaning given in clause 4.9(e)

Adjustment Disputed Matter has the meaning given in clause 4.9(e)(ii)(A).

AEMO means the Australian Energy Market Operator.

AER means the Australian Energy Regulator.

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) included a reference to this Agreement on the basis that Target is the 'designated body'.

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

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

ATO means the Australian Taxation Office.

ATO Class Ruling has the meaning given in clause 5.7(a)(i).

Bidder Counter Proposal has the meaning given in clause 10.5(a)(iii).

Bidder Group means Bidder and each of its Related Bodies Corporate (and excluding, at any time, Target and its Subsidiaries to the extent that Target and its Subsidiaries are subsidiaries of Bidder at that time). A reference to a **member of the Bidder Group** is a reference to any of them.

Bidder Information means information about the Bidder Group provided or approved by Bidder or any of its Advisers to Target in writing for inclusion in the Scheme Booklet, as required by clauses 5.3(a) and 5.3(g).

Bidder Party means any member of the Bidder Group or any officer, employee or Adviser of any of them.

Bidder Representation and Warranty means a representation and warranty of Bidder set out in Schedule 1.

BJEI ListCo means Beijing Energy International Holding Co., Ltd with stock code 686 on the Hong Kong Stock Exchange.

Borrower has the meaning given to that term in the Working Capital Facility.

Business Day means a day that banks are open for business in Sydney, Australia, the People's Republic of China and Hong Kong.

Cash-Free Debt-Free Balance means the amount calculated in accordance with clause 4.9(a) and Schedule 8.

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

Competing Proposal means any expression of interest, proposal, offer, agreement, arrangement or transaction (other than the Transaction), which, if entered into or completed would:

- (a) result in a Third Party (either alone or together with any Associate):
 - (i) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 15% or more of the issued shares in Target;
 - (ii) directly or indirectly acquiring control of Target within the meaning of section 50AA of the Corporations Act;
 - (iii) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of Target Group's business or assets or the business or assets of the Target Group; or
 - (iv) otherwise directly or indirectly acquiring or merging with Target; or
- (b) require Target to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved transaction, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger) or other transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any expression of interest, proposal, offer, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal for the purposes of this Agreement.

Conditions Precedent has the meaning given in clause 3.1.

Confidentiality Agreement means the confidentiality agreement between Bidder and Target dated 8 May 2023.

Corporations Act means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

Corporations Regulations means the *Corporations Regulations 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

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

CovaU means CovaU Pty Limited (ACN 090 117 730).

D&O Policy has the meaning given in clause 5.9(b).

Deed Poll means a Deed Poll in favour of the Note Trustee and all Scheme Shareholders in the form of Schedule 6 (or such other form agreed to in writing between the parties).

Distribution Payment Date has the meaning given in clause 4.5(b).

Draft Certificate has the meaning given in clause 2.6 of Schedule 5.

Draft Interim Balance means Target's calculation of the Cash-Free Debt-Free Balance of the Target Group calculated:

- (a) in accordance with Schedule 8; and
- (b) on the basis of the last Management Accounts available immediately prior to the date that the Draft Interim Balance is provided to Bidder under clause 4.9(b),

and having the same balance date as the Management Accounts referred to in limb (b) above.

Draft Pro Rata Adjustment means any increase or decrease in cash or cash equivalents of the Target Group between the Interim Balance Calculation Date and the Effective Date, as calculated in accordance with Annexure B of Schedule 8.

Due Diligence Material means the information disclosed by or on behalf of the Target Group (including in response to requests for information) to a Bidder Party through the electronic data room operated by Ansarada as at 5pm on 2 February 2024.

Earn Out Scheme Consideration means an amount determined in accordance with Schedule 5, the Scheme and the Note Trust Deed (including, for the avoidance of doubt, any adjustments or deductions made to the Earn Out Scheme Consideration in accordance with Schedule 5), as part of the consideration for the sale of the Scheme Shares by Scheme Shareholders.

Earn Out Market Valuation has the meaning given in clause 5.7(a)(ii).

Earn Out Tax Adjustment has the meaning given in clause 2.4 of Schedule 5.

Earn Out Value means an independent expert's valuation of the Earn Out Scheme Consideration (for the avoidance of doubt, not including any Earn Out Tax Adjustment) as disclosed in the Scheme Booklet.

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

Encumbrance means any security for the payment of money or performance of obligations including a mortgage, charge or lien or any agreement to create any of them or allow them to exist.

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

- (a) the termination of this Agreement;
- (b) the Sunset Date; and
- (c) the Effective Date.

Fairly Disclosed means, in relation to a matter, that sufficient information about the matter is disclosed in sufficient detail to enable a reasonable potential acquirer of Target who is properly advised and experienced in transactions similar to the Transaction to identify the nature, substance and scope of the relevant matter and to reach a reasonably informed view on the impact of the relevant matter on the Target Group.

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

Financier has the meaning given to that term in the Working Capital Facility.

FIRB means the Australian Foreign Investment Review Board.

FIRB Application means the Bidder's FIRB application.

FIRB Approval has the meaning given in clause 3.3(a).

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

Government Agency means any Australian or foreign government or governmental, semi-governmental or judicial entity or authority. It also includes any government minister (and their delegate), any self-regulatory organisation established under statute or any securities exchange and, for the avoidance of doubt, includes ASIC, FIRB, the ATO and equivalent bodies in jurisdictions outside Australia.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law.

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

GST Law has the same meaning as in the GST Act.

HKEX Circular has the meaning given in clause 3.1(k).

Hong Kong Stock Exchange means The Stock Exchange of Hong Kong Limited.

Hong Kong Stock Exchange Listing Rules means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited.

Implementation Date means the fifth Business Day after the Scheme Record Date.

Independent Expert means the independent expert appointed by Target under clause 5.1(b).

Independent Expert's Report means a report (including any written updates to such report) of

the Independent Expert stating whether or not in its opinion the Scheme is in the best interests of Target Shareholders.

Initial Scheme Consideration means \$8.77 per Scheme Share held by a Scheme Shareholder.

Insolvency Event means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, small business restructuring practitioner, controller or similar office appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) for:
 - (i) its winding up, dissolution or administration; or
 - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
 - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
 - (ii) security interest becomes enforceable or is enforced over; or
 - (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

Interim Balance means the figure agreed by the parties as the Interim Balance under clause 4.9(c).

Interim Balance Calculation Date means the date on which the Interim Balance is agreed between the parties under clause 4.9(c).

Key Contracts means each of the arrangements between a member of the Target Group and a third party counterparty as agreed between the parties in writing.

Management Accounts means the unaudited, consolidated financial statements of the Target Group.

Market Offer means non-negotiable offers that are published on the Target Group's website, available to any customer in the appropriate distribution zone with the appropriate metering configuration.

Matching Date means the date that is five Business Days after the date of the provision of the information referred to in clause 10.5(a)(ii).

Material Licence means each of the following:

- (a) AER Retailer Authorisation under the National Energy Retail Law – Electricity and Gas;

- (b) AEMO Registration as a 'Market Customer' under the National Electricity Rules;
- (c) the following AEMO Registrations under the National Gas Rules:
 - (i) registration as a 'Retailer' in the NSW, QLD, SA and VIC retail gas markets;
 - (ii) registration as a 'Retailer' in the Declared Wholesale Gas Market;
 - (iii) registration as an 'STTM User';
 - (iv) registration as a 'National Gas Bulletin Board (Shipper)';
- (d) Electricity Retail Licence issued by the Essential Services Commission of Victoria under the *Electrical Industry Act 2000* (Vic); and
- (e) Gas Retail Licence issued by the Essential Services Commission of Victoria under the *Gas Industry Act 2001* (Vic).

National Electricity Law means the National Electricity Law as set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA), as applied in each relevant participating jurisdiction.

National Electricity Rules means the rules made under the National Electricity Law as amended from time to time.

National Energy Retail Law means the National Energy Retail Law as set out in the schedule to the National Electricity Law.

National Gas Law means the National Gas Law as set out in the schedule to the *National Gas (South Australia) Act 2008* (SA), as applied in each relevant participation jurisdiction.

National Gas Rules means the rules made under the National Gas Law as amended from time to time.

Nominee Cost Reserve means the amount of \$567,142.85.

Note means the contractual right of each Scheme Shareholder to receive its share of the Earn Out Scheme Consideration, which is referred to as an unsecured note in accordance with this Agreement in order to comply with Bidder's obligation under s283BH(1) of the Corporations Act. For the avoidance of doubt, a Note does not create a debt in favour of any Scheme Shareholder, does not constitute a debenture under the common law definition of that term, and a debt does not otherwise exist under this Agreement with respect to any Note.

Noteholder means a holder of Notes.

Note Guarantor means Beijing Energy International (Australia) Holding Pty Limited or, if a Replacement Note Guarantor is identified before the Note Trust Deed is executed, means that Replacement Note Guarantor.

Note Trust Deed means the agreement to be entered into between Target, Bidder, the Note Trustee and Note Guarantor (if applicable) pursuant to clause 4.2 and substantially on terms which reflect the key principles set out in Schedule 9.

Note Trustee means an entity who meets the requirements of section 283AC of the Corporations Act and who is approved by Target (acting reasonably) and appointed by Bidder to be the trustee for the holders of the Notes under the Note Trust Deed.

Order means any decree, judgment, injunction, direction, writ or other order, whether temporary, preliminary or permanent, made or given by a court of competent jurisdiction or by another Government Agency.

Permitted Distribution means a return of capital or a special dividend or a combination of each of those, declared or determined by the Target Board, to be paid by Target to Target

Shareholders between the Effective Date and the Scheme Record Date in respect of which all of the requirements in clause 4.5 have been satisfied.

Permitted Encumbrance means:

- (a) a charge or lien arising in favour of a Government Agency by operation of statute in the ordinary course of the business of the Target Group;
- (b) any mechanics', workmen's or other like lien arising in the ordinary course of the business of the Target Group;
- (c) any retention of title arrangement or purchase money security interest (including arising from any lease of goods or consignment arrangement), in each case, arising in favour of a trade supplier to the business of the Target Group in the ordinary course of that business;
- (d) a PPS Lease (as defined in the PPSA);
- (e) any Security Interest within the meaning of section 12(3) of the PPSA;
- (f) any Encumbrance registered by Bidder;
- (g) any Encumbrance created in the ordinary course of business after the execution of this Agreement that does not secure the payment of financial indebtedness;
- (h) any Encumbrance approved in writing by Bidder; and
- (i) any Encumbrance relating to any specific financial indebtedness that is agreed by Bidder as not being paid out in connection with implementation of the Scheme.

Permitted Interim Distribution means an interim dividend or return of capital declared or determined by the Target Board, to be paid by Target to Target Shareholders between the date of this Agreement and the Effective Date in respect of which all of the requirements in clause 4.5 have been satisfied.

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

PPS Register means the register established under the PPSA.

Pro Rata Adjustment means the figure agreed by the parties as the Pro Rata Adjustment under clause 4.9(e) (and which may be a positive or negative figure).

Recommendation has the meaning given in clause 6.1(a)(i).

Regulatory Approvals means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without notification.

Replacement Note Guarantor means a party other than the Note Guarantor who:

- (a) is nominated by Bidder to Target in writing to act as the Replacement Note Guarantor;
- (b) has provided Target with written indication of its willingness to guarantee Bidder's obligations to pay the Earn Out Scheme Consideration and to become a party to the Note Trust Deed for that purpose; and
- (c) is acceptable to Target (such acceptance not to be unreasonably delayed) acting reasonably having regard to the likely quantum of the Earn Out Scheme Consideration and the net asset position of the proposed Replacement Note Guarantor, including any right that such party might have to access bank guarantees or other funding lines.

Related Body Corporate has the meaning given in the Corporations Act, provided that the references to 'subsidiary' will be read as if they are references to 'Subsidiary' as defined in this Agreement.

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

Representative means, in relation to Bidder or Target:

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

Retail Customers has the meaning given in the National Electricity Rules.

Reverse Break Fee means \$1,000,000.

Right means:

- (a) a right, granted by Target under an employment arrangement or agreement with any employee of the Target Group, to acquire a Target Share in certain circumstances; and
- (b) any other shares, options, performance rights, convertible notes, warrants or other securities or rights which may convey an entitlement to, or convert into, Target Shares or other equity interests in Target.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders in the form of Schedule 7 or such other form which may be agreed to in writing between Target and Bidder (each in their absolute discretion).

Scheme Booklet means the scheme booklet to be prepared by Target in accordance with clause 5.1(a) and to be approved by the Court for despatch to Target Shareholders and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notice of the Scheme Meeting and a proxy form for the Scheme Meeting.

Scheme Consideration has the meaning given in clause 4.3.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act and includes any adjournment or postponement of that meeting.

Scheme Record Date means 7:00pm on the second Business Day after the Distribution Payment Date or such other time and date agreed to in writing between Target and Bidder.

Scheme Shareholder means a person registered in the Target Share Register as the holder of one or more Scheme Shares at the Scheme Record Date.

Scheme Shares means the Target Shares on issue as at the Scheme Record Date.

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

Subsidiary has the meaning given in the Corporations Act, amended as necessary such that:

- (a) a body corporate or a trust will also be taken to be a Subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);

- (b) a trust may be a Subsidiary, for the purpose of which a unit or other beneficial interest in the trust will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and
- (c) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a body corporate.

Superior Proposal means a bona fide, written Competing Proposal which is received by the Target and which the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having obtained written advice from the Target's external legal adviser and financial advisers):

- (a) is reasonably capable of being valued and implemented taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and all other relevant legal, regulatory and financial matters; and
- (b) would, if completed in accordance with its terms, be more favourable to the Target's shareholders than the latest proposal provided by the Bidder or any of its Related Bodies Corporate, taking into account all aspects of the Competing Proposal and the latest proposal provided by the Bidder or any of its Related Bodies Corporate to the Target, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

Sunset Date means 15 ~~October~~ December 2024 with respect to the Condition Precedent in clause 3.1(a), and 31 May 2025 with respect to the Conditions Precedent in clauses 3.1(b) – 3.1(k) and for all other purposes (including the Exclusivity Period), or such other date or dates as agreed between the parties in writing.

Target Board means the board of directors of Target.

Target Break Fee means \$1,000,000.

Target Director means a director of Target.

Target Group means Target and each of its Subsidiaries. A reference to a **member of the Target Group** is a reference to any of them.

Target Information means all information in the Scheme Booklet, including, but not limited to information regarding the Target Group prepared by or on behalf of Target for inclusion in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the Corporations Regulations but excluding the Bidder Information and the Independent Expert's Report.

Target Material Adverse Change means:

- (a) any event, occurrence or matter occurring or of which Bidder or Target become aware after the date of this Agreement, which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences or matters:
 - (i) a diminution of the consolidated net assets of the Target Group (taken as a whole) by more than \$3,200,000; or
 - (ii) the Target Group becoming prohibited from operating as an energy retailer under the National Energy Retail Law as a result of:
 - (A) material enforcement action being taken against a member of the Target Group by the ACCC, the AER or the Essential Services Commission of Victoria; or

(B) any Material Licence being revoked, cancelled, voided or otherwise terminated,

provided that such inability continues for at least 10 Business Days; or

(iii) both:

(A) the total number of Retail Customers of the Target Group being reduced by more than 10% of the total number of Retail Customers of the Target Group as at the date of this Agreement; and

(B) the Target Group's total load attributable to Retail Customers of the Target Group being reduced in a given quarter by more than 10% as compared to the Target Group's total load attributable to Retail Customers of the Target Group in the same quarter in the previous calendar year,

provided that any such reductions to both the number of Retail Customers and load simultaneously are sustained for a period of at least 3 months and are reasonably likely to continue for a period of at least 12 months, in comparison to the same period of the previous year,

in each case other than an event, occurrence or matter:

- (b) required or expressly permitted by this Agreement or the Scheme (including the payment of a Permitted Distribution or Permitted Interim Distribution);
- (c) which Bidder has previously approved or requested in writing;
- (d) arising from an act or omission of Bidder;
- (e) to the extent that it was Fairly Disclosed in the Due Diligence Material;
- (f) Fairly Disclosed in a document which would be disclosed in a search of ASIC records or the PPS Register within 12 months prior to 2 February 2024;
- (g) Fairly Disclosed in a document which would be disclosed in the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to Target or a Subsidiary of Target (as relevant), in each case within 12 months prior to 29 November 2023;
- (h) that is (including its impact) within the actual knowledge of Bidder on or before the date of this Agreement (and is more than mere knowledge of the risk of an event, occurrence or matter happening);
- (i) arising from any actual or proposed change in any law, regulation, or Accounting Standards, except where such changes affect a member of the Target Group more severely than other Australian energy providers operating in the same industry and the difference between the impact on a member of the Target Group and other such Australian businesses operating in the same industry is not immaterial;
- (j) arising from market value adjustments to derivatives or debts;
- (k) arising from general economic, retail industry or political conditions or changes in those conditions (including financial market fluctuations, changes in interest rates, commodity prices, foreign currency exchange rates, commodity prices or markets (including domestic or international financial markets)), except where such changes affect a member of the Target Group more severely than other Australian energy providers operating in the same industry and the difference between the impact on a member of the Target Group and other such Australian businesses operating in the same industry is not immaterial;

- (l) arising from an act of terrorism, war (whether or not declared), natural disaster, epidemic, pandemic or adverse weather conditions, or the like;
- (m) arising from a pandemic or epidemic, including the COVID-19 virus (or any mutation, variation or derivative), including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues and gatherings or from any law, order, rule, recommendation, guidance or direction of any Government Agency in relation thereto;
- (n) relating to third party costs and expenses incurred by the Target Group associated with any Takeovers Panel proceedings in respect to the Target Group or Target's engagement with or response to any Competing Proposal, including any fees payable to external Advisers of Target; or
- (o) required by applicable law or regulation.

Target Party means any member of the Target Group or any officer, employee or Adviser of any member of the Target Group.

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

- (a) required or expressly permitted by this Agreement or the Scheme; or
- (b) with the prior written consent of Bidder.

Target Representation and Warranty means a representation and warranty of Target set out in Schedule 2.

Target Shareholder means a person who is registered as the holder of one or more Target Shares from time to time.

Target Shares means the shares on issue in the Target.

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

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding (including, for the avoidance of doubt, income tax, taxes relating to the franking of dividends, Pay as You Go tax, payroll tax, superannuation, superannuation guarantee charge and fringe benefits), that is assessed, levied, imposed or collected by any Government Agency or paid to a complying superannuation entity, and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above.

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

Tax Law means any law with respect to or imposing any Tax.

Third Party means a person other than any member of the Bidder Group.

Timetable means the indicative timetable for the implementation of the Transaction set out in Schedule 4.

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

Voting Power has the meaning given in the Corporations Act.

Voting Statement has the meaning given in clause 6.1(a)(ii).

Working Capital Facility has the meaning given in clause 4.6.

1.2 Interpretations

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an agreement includes any undertaking, Agreement, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to dollars and \$ is to Australian currency.
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (n) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (o) A reference to officer, or voting power is to that term as it is defined in the Corporations Act.
- (p) If a word or phrase is defined in a schedule or elsewhere in this Agreement, the definition is deemed to be included in clause 1.1, for the purposes of the whole document.

1.3 Business Day

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

1.4 Best and reasonable endeavours

A reference to a party using or an obligation on a party to use its best endeavours or reasonable endeavours or all reasonable endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

1.5 Consents or approvals

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

1.6 Knowledge, belief or awareness of Target

- (a) Certain statements made in this Agreement (including certain Target Representations and Warranties) are given and made by Target only on the basis of its knowledge, belief or awareness. For the purposes of this Agreement, Target's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing.
- (b) The knowledge, belief or awareness of any person other than the persons identified in clause 1.6(a) will not be imputed to Target.
- (c) None of the persons named in clause 1.6(a) will bear any personal liability in respect of the Target Representations and Warranties or otherwise under this Agreement except where such person acted fraudulently.

1.7 Listing requirements included as law

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

2 Agreement to Proceed with Scheme

2.1 Target to propose the Scheme

Target agrees to propose and implement the Scheme on and subject to the terms of this Agreement.

2.2 Bidder to assist

Bidder agrees to assist Target to propose and implement the Scheme, on and subject to the terms of this Agreement.

3 Conditions Precedent and Pre-implementation Steps

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clause 4.4 are not binding, unless each of the following conditions precedent (the **Conditions Precedent**) are satisfied or waived in accordance with clauses 3.2 and 3.4:

- (a) **(FIRB approval)** ~~before 8.00am~~ on or before the Sunset Date~~Second Court Date~~, either of the following occur:
- (i) the Treasurer of the Commonwealth of Australia (or their delegate) provides written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) stating that, or to the effect that, the Commonwealth Government has no objection to the acquisition contemplated by this Agreement, either on an unconditional basis or subject only to:
 - (A) 'standard' tax conditions which are in the form, or substantially in the form, of those set out in items 1 to 6 of Part D of the Australian Foreign Investment Review Board's Guidance Note 12 'Tax Conditions' (in the form last updated on 10 August 2023); and
 - (B) such other conditions acceptable to Bidder and Target, each acting reasonably; and
 - (ii) following Bidder giving notice under the FATA of the Transaction, the Treasurer of the Commonwealth of Australia becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the Transaction;
- (b) **(Target Shareholder approval)** Target Shareholders approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting;
- (c) **(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 Scheme and those consents, confirmations, approvals or other acts have not been withdrawn or revoked as at 8.00am on the Second Court Date;
- (d) **(Independent Expert)** the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Target Shareholders and does not publicly change or withdraw that conclusion before 8:00am on the Second Court Date;
- (e) **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification, or with modifications and conditions consented to by Bidder in accordance with clause 4.8);
- (f) **(No restraints)** no applicable law, regulation or rule has been enacted and no Order is in effect as at 8:00am on the Second Court Date (or the intended date for the Second Court Date, but for such law, regulation, rule or Order) that prevents, makes illegal or prohibits the implementation of the Scheme;
- (g) **(No Target Material Adverse Change)** no Target Material Adverse Change occurs between the date of this Agreement and 8:00am on the Second Court Date;

- (h) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence occurs between the date of this Agreement and 8:00am on the Second Court Date;
- (i) **(Note Trust Deed)** Target, the Bidder, the Note Guarantor and the Note Trustee having entered into the Note Trust Deed prior to the First Court Date;
- (j) **(Cash-Free Debt-Free Balance)** the Cash-Free Debt-Free Balance as reflected in the Interim Balance is not a negative amount; and
- (k) **(HKEX shareholder approval)** approval by BJEI ListCo shareholders pursuant to the Hong Kong Stock Exchange Listing Rules in respect of the Transaction having been obtained.

3.2 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this Agreement:

- (a) Bidder must use its best endeavours to satisfy, or procure the satisfaction of, the Condition Precedent in clauses 3.1(a) and 3.1(k). For clarity, Bidder will be deemed to have complied with this obligation:
 - (i) in respect of clause 3.1(a), if it complies with its obligations under clause 3.3; and
 - (ii) in respect of clause 3.1(k), if it complies with its obligations under clause 3.4;
- (b) Target must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(b), 3.1(g), 3.1(h) and 3.1(j);
- (c) Target and Bidder must, to the extent it is within their respective power to do so, each use best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(c), 3.1(e), 3.1(f) and 3.1(i) (provided that for clarity, nothing in this clause requires Bidder or Target to agree to any modification of, or amendment to the Scheme, or to the making or imposition by the Court of any condition in respect of, the Scheme); and
- (d) no party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this Agreement or the Scheme, or is required by law.

3.3 FIRB Approval

Without limiting the generality of clause 3.2:

- (a) to the extent it has not already done so prior to the date of this Agreement, Bidder must as soon as practicable (and in any event within 10 Business Days after the date of this Agreement), apply for the approval referred to in clause 3.1(a) (**FIRB Approval**);
- (b) Bidder must keep Target reasonably informed of progress in relation to the obtaining of the FIRB Approval, including:
 - (i) by promptly providing Target with reasonable details of all material dealings with FIRB in relation to the FIRB Application (including any requests for information related to Target by FIRB; and any conditions or other arrangements proposed by FIRB in respect of the FIRB Application to the extent they do not relate to commercially sensitive matters to any member of the Bidder Group); and
 - (ii) by promptly providing Target with any material information or matter which is likely to result in a delay in receipt of the FIRB Approval that would mean the

Timetable is unlikely to be achieved, or indicate that the FIRB Approval is unlikely to be given;

- (c) Bidder must consult with Target in advance in relation to all proposed material communications and the proposed content of those communications (whether written or oral and whether direct or via an Adviser) with FIRB relating to the FIRB Application (**Communications**), and in relation to each material step in the process of obtaining the FIRB Approval, including, for the avoidance of doubt, any agreement by Bidder to a request for extension by FIRB relating to the FIRB Application;
- (d) Bidder must allow Target to be represented at any proposed meeting with FIRB relating to the FIRB Application (including to attend any conference calls or video conferences), subject only to approval of FIRB;
- (e) without limiting any other provision of this clause 3.3, Bidder must:
 - (i) provide Target with drafts of any material written Communications to be sent to FIRB, and allow Target a reasonable opportunity to make comments on them prior to them being sent; and
 - (ii) promptly provide copies of any material written Communications received from FIRB,
 - except in circumstances where Bidder is not permitted by FIRB to share such material written Communications; and
- (f) before providing any document or other information to Target pursuant to this clause 3.3, Bidder may redact any part of that document, or not disclose any part of that information, which contains or constitutes private or sensitive information or competitively sensitive information relating to the existing business or affairs of Bidder Group or its ultimate owner.

3.4 HKEX shareholder approval

Without limiting the obligations of Bidder under clause 3.1(k), Bidder must use all reasonable endeavours to ensure that:

- (a) the circular which is to be despatched to shareholders of BJEI ListCo to obtain the approval contemplated in clause 3.1(k) ("**HKEX Circular**") is prepared and despatched in accordance with the Hong Kong Stock Exchange Listing Rules and any other applicable laws and regulations by no later than 31 May 2025~~30 September 2024~~;
- (b) Target is consulted as to the content and presentation of any information relating to the transactions contemplated by this Agreement and the Target Group in the HKEX Circular, including that:
 - (i) Target is given a reasonable amount of time to provide its comments on the relevant document; and
 - (ii) any reasonable comments made by Target in relation to that information or the relevant document is taken into account;
- (c) the shareholder meeting to approve the resolution contemplated in clause 3.1(k) is convened in accordance with the Hong Kong Stock Exchange Listing Rules and any other applicable laws and regulations by no later than 31 May 2025~~15 October 2024~~ (except where a cause outside of a party's control (including a force majeure event) prevents the meeting from being convened on or before that date);

- (d) subject to the Hong Kong Stock Exchange Listing Rules and any other applicable laws and regulations, shareholders of BJEI ListCo are given appropriate customary recommendations to vote in favour of the resolution; and
- (e) Target does not bear any costs in procuring the satisfaction of the Condition Precedent in clause 3.1(k).

3.5 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(e), 3.1(f) and 3.1(i) are for the benefit of Target and Bidder. Any breach or non-satisfaction of any of the Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(e) or 3.1(f) cannot be waived. Any breach or non-satisfaction of the Condition Precedent in clause 3.1(i) can only be waived by agreement in writing between Bidder and Target.
- (b) The Conditions Precedent in clauses 3.1(g), 3.1(h), 3.1(j) and 3.1(k) are for the sole benefit of Bidder, and any breach or non-satisfaction of that Condition Precedent may only be waived by Bidder giving its written consent.
- (c) The Condition Precedent in clause 3.1(d) is for the sole benefit of Target, and any breach or non-satisfaction of that Condition Precedent may only be waived by Target giving its written consent.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition Precedent pursuant to this clause 3.5 may do so in its absolute discretion.
- (e) If a waiver by either Target or Bidder of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (f) If either Target or Bidder waives the breach or non-satisfaction of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this Agreement constituted by the same event that gave rise to the breach or non-satisfaction of the Condition Precedent.
- (g) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
 - (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event or circumstance.

3.6 Notifications

Each of Target and Bidder must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms.

3.7 Failure of Conditions Precedent

- (a) If:
- (i) there is a breach or non-satisfaction of a Condition Precedent which is not waived in accordance with this Agreement;
 - (ii) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this Agreement); or
 - (iii) a Condition Precedent is not satisfied by ~~its~~the Sunset Date;

then either Target or Bidder may serve a written notice on the other party, and Target or Bidder must promptly consult in good faith with a view to determining whether:

- (iv) the Scheme or the Transaction may proceed by way of alternative means or methods;
 - (v) to extend the relevant time or date for satisfaction of the Condition Precedent;
 - (vi) to change the First Court Date or to adjourn the application for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to another date agreed by Target and Bidder;
 - (vii) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme to another date agreed by Target and Bidder; or
 - (viii) to further extend the Sunset Date.
- (b) If Target and Bidder are unable to reach agreement under clauses 3.7(a)(iv), 3.7(a)(v), 3.7(a)(vi), 3.7(a)(vii) or 3.7(a)(viii) within five Business Days after the delivery of the notice under that clause (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date), then subject to clause 3.7(c), either Target or Bidder may terminate this Agreement by notice in writing to the other party, provided that:
- (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
 - (ii) there has been no failure by that party to comply with its obligations under this Agreement, where that failure contributed in a material respect to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before ~~its~~the Sunset Date,

in which case clause 13.3 will have effect.

- (c) If the Condition Precedent in clause 3.1(e) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may, within 3 Business Days after the date of the Scheme Meeting, give written notice to the other party that it intends to apply to the Court to exercise its discretion existing under that section and, if a party gives such notice:
- (i) they must submit such application by no later than 5 Business Days after the date of the Scheme Meeting; and
 - (ii) the parties must not exercise any right of termination under clause 3.7(b) until such application has been decided.

3.8 Certificates in relation to Conditions Precedent

- (a) On the Second Court Date each of Target and Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date the Conditions Precedent have been satisfied or waived in accordance with this Agreement.
- (b) Each of Target and Bidder must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.8(a) by 5:00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

4 Transaction Steps

4.1 Scheme

Target must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

4.2 Note Trust Deed

- (a) As soon as reasonably practicable after the date of this Agreement:
 - (i) Bidder and Target must, acting reasonably, agree the form of the Note Trust Deed with each other and the Note Trustee; and
 - (ii) Bidder must appoint the Note Trustee.
- (b) Bidder and Target acknowledge and agree that the Note Trust Deed must:
 - (i) provide for the payment of the Earn Out Scheme Consideration on the terms of Schedule 5 of this Agreement;
 - (ii) include provisions under which the Note Guarantor agrees to guarantee the payment to the Note Trustee of the Earn Out Scheme Consideration on the terms of Schedule 5 of this Agreement unless alternate surety arrangements in respect of such payment are agreed by Bidder and Target;
 - (iii) note that the unsecured notes are not transferrable; and
 - (iv) otherwise be on terms which reflect the key principles set out in Schedule 9, unless Bidder and Target agree otherwise.
- (c) Bidder and Target agree to cooperate in good faith to incorporate into the Note Trust Deed any reasonable comments received from the Note Trustee.
- (d) Subject to the Note Trust Deed being agreed in accordance with clauses 4.2(a) to 4.2(c), Bidder must:
 - (i) execute and deliver the Note Trust Deed and procure that the Note Guarantor executes and delivers the Note Trust Deed (if applicable) in the form agreed with Target; and
 - (ii) take all reasonable steps to procure the appointment of the Note Trustee and to procure that the Note Trustee executes and delivers the Note Trust Deed, prior to the First Court Date.
- (e) Bidder and Target each acknowledge that Bidder's obligations with respect to payment of the Earn Out Scheme Consideration will be guaranteed by the Note Guarantor under the

terms of the Note Trust Deed (or Bidder's obligations with respect to payment of the Earn Out Scheme Consideration may be supported by such surety arrangements as Bidder and Target may otherwise agree).

4.3 Scheme Consideration

The **Scheme Consideration** means the consideration to be provided to Scheme Shareholders under the terms of the Scheme for the transfer to Bidder of their Target Shares, being:

- (a) the Initial Scheme Consideration payable to each Scheme Shareholder; and
- (b) the share of Earn Out Scheme Consideration payable to each Scheme Shareholder.

4.4 Provision of Initial Scheme Consideration, Nominee Cost Reserve and Earn Out Scheme Consideration

Bidder undertakes to Target that, in consideration of the transfer to Bidder of the Scheme Shares under the terms of the Scheme, it will:

- (a) on the Implementation Date, accept that transfer; and
- (b) pay or procure payment of:
 - (i) by no later than 5.00pm on the Business Day before the Implementation Date:
 - (A) the Nominee Cost Reserve to the Note Trustee (or its delegate or agent) (on behalf of each Scheme Shareholder);
 - (B) the Initial Scheme Consideration to Target (on behalf of each Scheme Shareholder); and
 - (ii) by the time specified in clause 3.1 of Schedule 5, the Earn Out Scheme Consideration to the Note Trustee (or its delegate or agent) (on behalf of each Scheme Shareholder),

in accordance with the terms of the Scheme, the Deed Poll and the Note Trust Deed (as applicable).

4.5 Permitted Distribution and Permitted Interim Distributions

- (a) Subject to clause 4.5(b), Bidder acknowledges and agrees that Target may (in its absolute discretion) at any time announce, declare and pay:
 - (i) a Permitted Distribution, on or prior to the Scheme Record Date; and
 - (ii) one or more Permitted Interim Distributions, on or prior to the Effective Date, provided that the maximum aggregate amount of such Permitted Distribution and any Permitted Interim Distribution is equal to or less than the Cash-Free Debt-Free Balance.
- (b) If Target announces, declares and pays a Permitted Distribution or Permitted Interim Distribution in accordance with clause 4.5(a):
 - (i) the Permitted Distribution or Permitted Interim Distribution must be paid in cash;
 - (ii) the Permitted Distribution must be payable on or after the Effective Date and before the Business Day that is immediately prior to the Scheme Record Date (**Distribution Payment Date**), and any Permitted Interim Distribution must be payable before the Business Day that is immediately prior to the Effective Date;
 - (iii) the Permitted Distribution or Permitted Interim Distribution must not be in breach of the 'Benchmark Franking Rule' under section 203-25 of the Tax Act;

- (iv) the Permitted Distribution or Permitted Interim Distribution may be franked to the maximum extent possible, subject always to the Permitted Distribution or Permitted Interim Distribution not causing the franking account to be (or deemed to be) in deficit at any time before or after the implementation of the Scheme; the Permitted Distribution or Permitted Interim Distribution must not put any member of the Target Group in breach of the applicable capital requirements set out in ASIC Regulatory Guide 166; and
 - (v) the Permitted Distribution or Permitted Interim Distribution must comply with the Corporations Act.
- (c) In order to ensure there are sufficient profits or distributable reserves in Target to pay the Permitted Distribution and any Permitted Interim Distribution, one or more members of the Target Group may settle intercompany balances or enter into other intercompany transactions or pay a dividend out of its profits, retained earnings or distributable reserves (or a combination of all or some of them) to another member of the Target Group, provided that such dividend is in accordance with all applicable laws, including the Corporations Act or equivalent foreign law.
- (d) Bidder undertakes (on behalf of itself and Bidder Group) that no amount of the Permitted Distribution or any Permitted Interim Distribution shall be directly or indirectly funded on or after implementation from the issue of equity interests (as defined in section 995-1 of the Tax Act) by any company, whether such equity interests are issued before or after the implementation of the Scheme. For clarity, this includes an undertaking that no proceeds from the issue of equity interests (as defined in section 995-1 of the Tax Act) will be applied by the Bidder Group towards repayment of any portion of a debt facility that has been drawn by Target prior to implementation to pay part or all of the Permitted Distribution or Permitted Interim Distribution.

4.6 Working capital facility

- (a) The parties acknowledge and agree that Bidder will provide a working capital facility to Target that is equal to the Cash-Free Debt-Free Balance agreed under clause 4.9, up to a maximum of \$35,000,000, to ensure that the Target Group will remain solvent and maintain sufficient levels of working capital following payment of any Permitted Distribution on reasonable terms in a form agreed between the parties with the maximum commitment being the Permitted Distribution (the **Working Capital Facility**).
- (b) Bidder undertakes (on behalf of itself and Bidder Group) that no amount of the Working Capital Facility will be directly or indirectly funded from the issue of equity interests (as defined in section 995-1 of the Tax Act) by any company, whether such equity interests are issued before or after the implementation of the Scheme.

4.7 Fractional entitlements

If the number of Scheme Shares held by a Scheme Shareholder as at the Scheme Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration includes a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents.

4.8 No amendment to Scheme without consent

Target must not consent to any modification of, or amendment to the Scheme, or to the making or imposition by the Court of any condition in respect of, the Scheme without obtaining the prior written consent of Bidder (such consent not to be unreasonably withheld).

4.9 Cash-Free Debt-Free Balance

- (a) The Cash-Free Debt-Free Balance is the amount which is equal to:
- (i) the Interim Balance; *plus*
 - (ii) the Pro Rata Adjustment,
- as agreed by the parties in accordance with this clause 4.9.
- (b) No later than 15 Business Days prior to the date of the Scheme Meeting, Target must provide to Bidder:
- (i) the Draft Interim Balance; and
 - (ii) the Management Accounts upon which the Draft Interim Balance has been calculated (which must be the most recent Management Accounts) and all associated relevant working papers and underlying calculations,
- and Bidder must commence its review of the Draft Interim Balance as soon as reasonably practicable after receipt of the above documents, with a view to finalising its review as soon as reasonably practicable.
- (c) As soon as reasonably practicable (and in any event no later than 5 Business Days after Target has provided the Draft Interim Balance to Bidder under clause 4.9(b)), Bidder must give Target written notice confirming that Bidder either:
- (i) does not dispute any items in the Draft Interim Balance, in which case the parties are deemed to have agreed that the Draft Interim Balance is the “**Interim Balance**” for the purposes of the calculation in clause 4.9(a); or
 - (ii) disputes one or more items in the Draft Interim Balance, in which case the parties must use best endeavours to agree such disputed items as soon as reasonably practicable (and in any event no later than 15 Business Days after Target has provided the Draft Interim Balance to Bidder under clause 4.9(b)). Once all items in dispute are resolved between the parties, the Draft Interim Balance as amended by agreement of the parties under this clause 4.9(c)(ii) will be the agreed “**Interim Balance**” for the purposes of the calculation in clause 4.9(a).
- (d) Subject to the parties first agreeing the Interim Balance under clause 4.9(c), on the Effective Date Target must provide to Bidder:
- (i) the Draft Pro Rata Adjustment; and
 - (ii) all relevant working papers and underlying calculations of the Draft Pro Rata Adjustment,
- and Bidder must commence its review of the Draft Pro Rata Adjustment as soon as reasonably practicable after receipt of the above documents, with a view to finalising its review as soon as reasonably practicable.
- (e) As soon as reasonably practicable following Bidder’s review of the Draft Pro Rata Adjustment (and in any event within 3 Business Days of receipt of the Draft Pro Rata Adjustment (**Adjustment Dispute Notice Deadline**)), Bidder must give Target written notice confirming that Bidder either:

- (i) does not dispute any item in the Draft Pro Rata Adjustment, in which case the parties are deemed to have agreed that the Draft Pro Rata Adjustment is the “**Pro Rata Adjustment**” for the purposes of the calculation in clause 4.9(a); or
 - (ii) disputes one or more items in the Draft Pro Rata Adjustment, in which case the written notice (**Adjustment Dispute Notice**) must set out:
 - (A) full and specific details of each of the matters the subject of the dispute (**Adjustment Disputed Matter**);
 - (B) a separate dollar value for each of those matters; and
 - (C) full and specific details of the reasons why each of those matters is disputed.
- (f) If Bidder serves an Adjustment Dispute Notice on Target before the end of the Adjustment Dispute Notice Deadline, on the next Business Day after the Adjustment Dispute Notice is served (or within such longer period as Bidder and Target may agree in writing), the parties must:
- (i) appoint the Adjustment Auditor to determine the Adjustment Disputed Matter; and
 - (ii) give the Adjustment Auditor a copy of the Interim Balance agreed under clause 4.9(c), the Draft Pro Rata Adjustment provided by Target under clause 4.9(d), the associated relevant working papers and underlying calculations, and the Adjustment Dispute Notice.
- (g) The Adjustment Auditor’s role is to consider and determine the Adjustment Disputed Matter.
- (h) Each of Bidder and Target may make written submissions to the Adjustment Auditor in respect of the review of the Adjustment Disputed Matter, provided that a copy of any written submission is promptly provided to the other and must not otherwise make contact with or make submissions to the Adjustment Auditor in relation to the Adjustment Disputed Matter.
- (i) Bidder and Target must use their best endeavours to procure the Adjustment Auditor completes its review of the Adjustment Disputed Matter:
- (i) no later than 2 Business Days after it has received all of the information referred to in clause 4.9(f)(ii) (or within such longer period as Bidder and Target may agree in writing); and
 - (ii) in accordance with this clause 4.9.
- (j) Bidder and Target must promptly supply the Adjustment Auditor with any information, assistance and cooperation reasonably requested in writing by the Adjustment Auditor in connection with its review of the Adjustment Disputed Matter. All correspondence between the Adjustment Auditor and either Bidder or Target must be copied to the other.
- (k) Bidder and Target must instruct the Adjustment Auditor that, at the completion of the Adjustment Auditor’s review of the Adjustment Disputed Matter, the Adjustment Auditor must give notice in writing to Bidder and Target of its determination of the Adjustment Disputed Matter.
- (l) The Adjustment Auditor must act as an expert and not as an arbitrator and the written determination of the Adjustment Auditor will be conclusive, final and binding on Bidder and Target, and the Adjustment Auditor’s written determination of the Pro Rata Adjustment will be the agreed “**Pro Rata Adjustment**” for the purposes of the calculation in clause 4.9(a).

- (m) If an Adjustment Dispute Notice is served and:
 - (i) the Adjustment Auditor determines that the Draft Pro Rata Adjustment was incorrect, the costs of the Adjustment Auditor will be treated as debt for the purposes of the Permitted Distribution; or
 - (ii) the auditor determines that the Draft Pro Rata Adjustment was correct, the costs of the Adjustment Auditor will be borne by Bidder.
- (n) For the purposes of this clause 4.9, the Cash-Free Debt-Free Balance will be deemed as being agreed on:
 - (i) if Bidder serves written notice on Target on or before the Adjustment Dispute Notice Deadline in accordance with clause 4.9(e)(i) that it does not dispute any item in the Draft Pro Rata Adjustment, the day on which that notice is served on Target; or
 - (ii) if Bidder serves an Adjustment Dispute Notice on Target on or before the Adjustment Dispute Notice Deadline, the day on which the Adjustment Auditor gives its determination of the Pro Rata Adjustment to Bidder and Target under clause 4.9(l) following completion of its review of the Adjustment Disputed Matter.
- (o) For clarity, no Permitted Distribution may be announced or made unless and until the Cash-Free Debt-Free Balance is conclusive, final and binding on Bidder and Target under clause 4.9(n).
- (p) If no Permitted Distribution is made due to the failure of the parties to agree the Interim Balance in accordance with clause 4.9(c), either party may terminate this Agreement by notice in writing to the other party in which case clause 13.3 will have effect.

5 Implementation

5.1 Target's obligations

Target must take all steps reasonably necessary to propose and implement the Scheme as soon as is reasonably practicable after the date of this Agreement and must use its best endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing any acts it is authorised and able to do on behalf of Target Shareholders and each of the following.

- (a) **(Preparation of Scheme Booklet)** Subject to Bidder complying with its obligations under clauses 5.3(a), 5.3(b) and 5.3(d), prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules. The Scheme Booklet must include a statement that:
 - (i) other than the Bidder Information and the Independent Expert's Report, the Scheme Booklet has been prepared by Target and is the responsibility of Target, and that no Bidder Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Bidder Information); and
 - (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and that no Target Party assumes any responsibility for the accuracy or completeness of the Bidder Information.

The Scheme Booklet must also include the Recommendation and Voting Statement required under clause 6.

- (b) **(Independent Expert)** Promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this Agreement), and provide all

assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report.

- (c) **(Consultation with Bidder)** Consult with Bidder as to the content and presentation of the Scheme Booklet, such consultation to include allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet before its lodgement with ASIC and obtain Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) prior to lodgement of the Scheme Booklet with ASIC. Target must consider in good faith any comments on drafts of the Scheme Booklet provided by or on behalf of Bidder.
- (d) **(Liaison with ASIC)** As soon as reasonably practicable after the date of this Agreement but no later than 14 days before the First Court Date, and following Bidder giving confirmation or providing changes as contemplated by clause 5.3(e), provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder, and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet or the Transaction generally (and of any resolution of those matters), and use reasonable endeavours, in consultation with Bidder, to resolve any such matters (provided that Target may not resolve any such matters without the prior written consent of Bidder to the extent that such matters relate to the Bidder Information).
- (e) **(Indication of intent)** Apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date.
- (f) **(Approval of Scheme Booklet)** As soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Scheme Booklet, procure that a meeting of the Target Board is convened for the purpose of approving the Scheme Booklet for despatch to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act.
- (g) **(Court direction)** Apply to the Court for orders directing Target to convene the Scheme Meeting, and consult with Bidder as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Target must consider in good faith any comments provided by or on behalf of Bidder.
- (h) **(ASIC registration)** Request ASIC to register the Scheme Booklet in the form approved by the Court.
- (i) **(Despatch)** Send the Scheme Booklet to Target Shareholders following receipt of Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet.
- (j) **(Update Scheme Booklet)** If, after the Scheme Booklet has been sent to Target Shareholders, it becomes aware of information that is:
- (i) not included in the Scheme Booklet and that is:
 - (A) material for disclosure to Target Shareholders in deciding whether to approve the Scheme; or
 - (B) required to be disclosed to Target Shareholders under any applicable law; or

- (ii) included in the Scheme Booklet and is misleading or deceptive in a material respect in the form and context in which it appears in the Scheme Booklet, inform Target Shareholders of the information in an appropriate and timely manner, in accordance with applicable law. Target must consult with Bidder as to the form and content of any supplementary disclosure before it is made to Target Shareholders, and, to the extent reasonably practicable, must provide Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of Bidder. To the extent that any supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed).
- (k) **(Scheme Meeting)** Convene the Scheme Meeting to approve the Scheme (in accordance with any orders made by the Court).
- (l) **(No objection statement)** Apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- (m) **(Court approval)** Subject to all Conditions Precedent in clause 3.1 (other than that in clause 3.1(e)) being satisfied or waived in accordance with this Agreement, apply to the Court for orders approving the Scheme, and consult with Bidder as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Target must consider in good faith any comments provided by or on behalf of Bidder.
- (n) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme by not later than the first Business Day after the day such office copy is received (or such later date as Bidder may agree in writing).
- (o) **(Representation)** Allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at the Court hearings in relation to the Scheme.
- (p) **(Implementation)** If the Scheme becomes Effective:
- (i) procure ASX to suspend trading in Target Shares from the close of trading on the Effective Date;
 - (ii) close the Target Share Register at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to the Initial Scheme Consideration;
 - (iii) subject to Bidder satisfying its obligations under clause 4.4(b)(i), execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders in favour of Bidder and procure the registration in the Target Share Register of all transfers of Scheme Shares to Bidder under those instruments on the Implementation Date.
- (q) **(ASX listing)** Maintain Target's admission to the official list of ASX and the quotation of Target Shares on ASX up to and including the Implementation Date.

5.2 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme:

- (a) Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and

- (b) Target must appeal the Court's decision (unless Target and Bidder agree otherwise, or an independent senior counsel of the New South Wales bar advises that, in their view, an appeal would have no reasonable prospect of success before the Sunset Date).

5.3 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Target to propose and implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing each of the following.

- (a) **(Bidder Information)** Prepare and provide to Target the Bidder Information for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act and ASIC Regulatory Guide 60 relevant to the Bidder Information and consult with Target as to the content and presentation of the Bidder Information in the Scheme Booklet, such consultation to include allowing Target a reasonable opportunity to review and make comments on successive drafts of the Bidder Information before lodgement of the Scheme Booklet with ASIC. Bidder must consider in good faith any comments on drafts of the Bidder Information provided by or on behalf of Target.
- (b) **(Review drafts of Scheme Booklet)** As soon as practicable after delivery, review drafts of the Scheme Booklet prepared by Target and provide any comments on those drafts.
- (c) **(Due diligence and verification)** Undertake appropriate due diligence and verification processes in relation to the Bidder Information and, after those processes have been completed, provide on or before the First Court Date an affidavit to the Court confirming the due diligence and verification processes undertaken and their completion.
- (d) **(Independent Expert information)** Provide all assistance and information reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (e) **(Confirmation of Bidder Information)** Before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act, procure that a meeting of the board of directors of Bidder is held to consider the Bidder Information included in the Scheme Booklet as being in a form appropriate for provision to ASIC for review, and either:
 - (i) confirm in writing to Target that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
 - (ii) provide to Target the changes required to ensure that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission.
- (f) **(Approval and consent to inclusion of Bidder Information)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet:
 - (i) procure that a meeting of the board of directors of Bidder is held to consider the Bidder Information included in the Scheme Booklet as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court; and
 - (ii) confirm in writing to Target that Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears.

- (g) **(Update Bidder Information)** If at any time after the despatch of the Scheme Booklet, Bidder becomes aware:
- (i) of new information which, were it known at the time of despatch, should have been included in any Bidder Information included in that version of the Scheme Booklet; or
 - (ii) that any part of the Bidder Information included in that version of the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise),
- it must advise Target so that Target can determine whether supplementary disclosure to Target Shareholders is required in accordance with (and subject to the terms of) clause 5.1(j).
- (h) **(Deed Poll)** By no later than the Business Day prior to the First Court Date:
- (i) Bidder must enter into and must procure that the Note Guarantor enters into, the Deed Poll; and
 - (ii) Bidder must deliver an executed copy of the Deed Poll to Target.
- (i) **(Court representation)** Procure that it is represented by counsel at the Court hearings convened in relation to the Scheme, at which, through its counsel or solicitors, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this Agreement and the Scheme.
- (j) **(Scheme Consideration)** If the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4.4, Schedule 5 and the Note Trust Deed (in relation to the Earn Out Scheme Consideration only) and the terms of the Scheme.
- (k) **(Promote Transaction)** Participate in efforts reasonably requested by Target to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Target, meeting with Target Shareholders.
- (l) **(Note statement)** Procure the issue of a Note Statement (as that term is defined in the Note Trust Deed) to each Scheme Shareholder by no later than 2 Business Days after the Implementation Date.

5.4 Governance arrangements

On the Implementation Date, but subject to the Initial Scheme Consideration having been paid by Bidder in accordance with the Scheme and receipt by Target of signed consents to act, Target must take all actions necessary to:

- (a) appoint the persons nominated by Bidder as new directors of Target and each member of the Target Group;
- (b) procure that all directors on the Target Board and any board of directors of a member of the Target Group (other than the new directors of the Target Group appointed pursuant to clause 5.4(a)) resign from the Target Board and the boards of any member of the Target Group, with such written notice of resignation to confirm that the outgoing director has no outstanding Claim against the Target Group provided that:
 - (i) any such confirmation must not limit any Claim in the future under any deed of access and indemnity with any member of the Target Group, any constituent

document of any member of the Target Group or any directors and officers insurance policy entered into by any member of the Target Group, provided that:

- (A) no such Claim may be made in respect of matters of which the relevant director was aware:
 - (1) at the date of this Agreement; or
 - (2) at the date of that director's resignation,
 and which were not disclosed to Bidder; and
- (B) any such Claim may only be made by a director or former director in his or her capacity as a director former director of Target or a member of the Target Group; and
- (ii) Target is not required to take any action under clause 5.4(a) or 5.4(b) which would cause any member of the Target Group to be in breach of any applicable law or regulation.

5.5 Conduct of Target Business

During the period from the date of this Agreement up to and including the Implementation Date, Target must, and must procure that each other member of the Target Group must:

- (a) conduct its business and operations in the ordinary course and substantially consistent (subject to any applicable laws and regulations) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this Agreement and in all material respects with all applicable laws, regulations, licences, authorisations, regulatory approvals and regulatory requirements, including under ASIC regulatory guides;
- (b) not enter into any material line of business which is materially different to the business in which the Target Group is engaged in as of the date of this Agreement;
- (c) not take any action that constitutes a Target Prescribed Occurrence;
- (d) keep Bidder reasonably informed of material developments concerning the conduct of the Target Group business;
- (e) provide to Bidder in a timely manner:
 - (i) the monthly management financial report provided to the Target Board; and
 - (ii) all board papers of the Target Board by any means, including email, provided that Target may redact any part of the relevant board papers as reasonably required by Target,

provided that Target will not be required to provide any such information to the extent that it would:

- (iii) put a member of the Target Group in breach of any duty or obligation or confidence, provided that Target has used reasonable endeavours to seek required consents; or
- (iv) compromise legal professional privilege (in Target's reasonable opinion);
- (f) use reasonable endeavours to maintain and preserve the relationships of each member of the Target Group with customers, suppliers, licensors, licensees, Government Agencies and others having material business dealings with a member of the Target Group;

- (g) not close out any energy market derivatives;
- (h) promptly notify Bidder of any material changes to the pricing offered to the Target Group's customers under a Market Offer;
- (i) not:
 - (i) incur any financial indebtedness or issue any indebtedness or debt securities, other than:
 - (A) to other members of the Target Group; or
 - (B) drawdowns or advances under any debt facilities which have been Fairly Disclosed in the Due Diligence Materials; or
 - (C) for working capital purposes during the period commencing 1 August 2024 and ending on the day before the date that Target provides the Draft Interim Balance to Bidder under clause 4.9(b). For clarity, the Target does not need to repay the financial indebtedness incurred in accordance with this sub-paragraph (C) any earlier than after the Implementation Date;
 - (ii) make or agree to make any material change to the terms of, or waive any Claims or rights under, or waive the benefit of any material provisions of, any contract of employment with any officer of Target or of any Subsidiary of Target;
 - (iii) enter into any employment contract with an employee having a total employment cost in excess of \$400,000 per annum in total, unless that person is being employed:
 - (A) in a role for which there is an existing vacancy as at the date of this Agreement; or
 - (B) to replace an employee who resigns or whose employment is terminated following the date of this Agreement, provided that the employment terms of the new employee are no more favourable to those of the existing employee;
 - (iv) increase the remuneration or compensation by more than \$800,000 (in aggregate for all employees) or more than the consumer price index at the relevant time (up to a maximum of 10%) per individual employee of, any employee of any member of the Target Group, other than:
 - (A) pursuant to contractual arrangements in effect on the date of this Agreement and which are Fairly Disclosed in the Due Diligence Materials;
 - (B) increases in remuneration or compensation as part of annual reviews conducted in the ordinary course of business and consistent with past practice; or
 - (C) as required by law,
 or make any discretionary payments other than as Fairly Disclosed in the Due Diligence Material;
 - (v) declare, announce or make any bonus payment, retention payment or termination payment, other than:
 - (A) in accordance with any employment contract or arrangement entered into prior to the date of this Agreement and which has been Fairly Disclosed; or

For personal use only

- (B) in the case of bonus payments only, in a manner consistent with past practice;
- (vi) acquire, agree to acquire, lease, agree to lease, dispose of, agree to dispose of or offer, propose or announce a bid or tender for any entity, business or assets, other than:
 - (A) as legally committed in any contract Fairly Disclosed in the Due Diligence Material; or
 - (B) in the ordinary course of business,

where the value of such entity, business or assets exceeds 5% of the net assets of the Target Group as at the date of this Agreement (either individually or, in the case of related businesses or classes of assets or a series of related transactions, collectively); or
- (vii) vary or terminate a Key Contract;
- (viii) enter into, vary or terminate any contract, joint venture, partnership or commitment (or any series of related contracts or commitments) (other than a Key Contract) that requires or is likely to result in expenditure by the Target Group of an amount equal to 5% of the net assets of the Target Group (as at the date of this Agreement) or more in any given year, other than expenditure made in connection with wholesale trading by the Target Group;
- (ix) enter into a transaction with any "related party" (as defined in section 228 of the Corporations Act) of a member of the Target Group (other than a related party which is a wholly owned member of the Target Group);
- (x) commence any litigation, arbitration or other legal proceedings (other than for collection of debts owing to a member of the Target Group);
- (xi) make any Tax election or settle or compromise any Tax liability, other than in complying with clause 5.5(i)(xii);
- (xii) fail to pay any Tax when due and payable;
- (xiii) change any accounting policy applied by a member of the Target Group to report their financial position other than any change in policy required by a change in Accounting Standards; or
- (xiv) agree to any do any of the matters set out above,

in each case except to the extent:

- (j) required or expressly permitted by this Agreement or the Scheme;
- (k) Fairly Disclosed in the Due Diligence Material;
- (l) Fairly Disclosed to ASX within three years prior to 22 December 2023;
- (m) Fairly Disclosed in a document which would be disclosed in a search of ASIC records or the PPS Register in relation to Target or a subsidiary of Target (as relevant), in each case within 12 months prior to 2 February 2024;
- (n) Fairly Disclosed in a document which would be disclosed in a search of the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to Target or a Subsidiary of Target (as relevant), in each case within 12 months prior to 29 November 2023;
- (o) required to respond to an emergency or disaster;

- (p) required by any applicable law or regulation, or by an Order;
- (q) the relevant expenditure is consistent with the budgets or other business plans for the Target Group (including any capital expenditure program set out in budgets and/or business plans) which are contained in the Due Diligence Material; or
- (r) agreed to in writing by Bidder.

5.6 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this Agreement up to and including the Implementation Date, Target must, and must procure each of its Subsidiaries to, respond to reasonable requests from Bidder and its Representatives for information concerning the Target Group businesses, operations and affairs as soon as reasonably practicable after such requests are made, and give Bidder and its Representatives reasonable access to the Target's senior executive team and records, and otherwise provide reasonable co-operation to Bidder and its Representatives, in each case for the purposes of:
 - (i) the implementation of the Scheme;
 - (ii) integration planning prior to implementation of the Scheme which, for the avoidance of doubt, does not include ongoing due diligence on the Target Group; or
 - (iii) any other purpose that is agreed in writing between Target and Bidder.
- (b) **(Limits on Target obligations)** The obligations in clause 5.6(a) and clause 5.8 do not require Target to:
 - (i) do anything which would cause undue disruption to the operation of its business in the ordinary course;
 - (ii) require a member of the Target Group to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
 - (iii) require a member of the Target Group to take any action that would breach an obligation to any person (including any confidentiality obligations) provided that Target has used reasonable endeavours to seek required consents;
 - (iv) provide information to Bidder concerning the Target Directors' and management's consideration of the Scheme; or
 - (v) provide any confidential or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Target Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege (provided Target must use its reasonable endeavours to facilitate the provision of such information without waiving legal professional privilege or on the basis of a limited waiver, such that privilege more generally is not lost).
- (c) The parties acknowledge that all information that is provided pursuant to this clause 5.6 will be provided subject to the terms of the Confidentiality Agreement.

5.7 ATO class ruling and Earn Out Market Valuation

- (a) Target intends to:

- (i) submit a class ruling application to the ATO requesting confirmation of certain Australian taxation implications of the Scheme for certain Target Shareholders (**ATO Class Ruling**); and
 - (ii) appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this Agreement) to calculate the Earn Out Value and the market value of the Earn Out Tax Adjustment (if any) (the **Earn Out Market Valuation**).
- (b) The parties agree and acknowledge that, in relation to the ATO Class Ruling and the Earn Out Market Valuation:
- (i) Target shall provide Bidder with all material correspondence, documents and applications for comment prior to providing them to the ATO or the Independent Expert, as applicable, and will take into account all reasonable comments made by the Bidder;
 - (ii) Target shall allow Bidder, at Bidder's written request, to be party to any meetings with the ATO and the Independent Expert (as relevant);
 - (iii) each of Target and Bidder agree to take all actions as both Target and Bidder agree (each acting reasonably) are necessary or desirable following any comments provided by the ATO on the class ruling application or the Independent Expert on the Earn Out Market Valuation; and
 - (iv) the Bidder shall provide all reasonable assistance to Target as may reasonably be requested by Target in relation to the ATO Class Ruling or the Earn Out Market Valuation, for the purpose of obtaining such a ruling or valuation.

5.8 Change of control consents

As soon as practicable after the date of this Agreement, Target and Bidder must use reasonable endeavours to identify any change of control or unilateral termination rights in material contracts to which Target or another member of the Target Group is party which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those contracts:

- (a) Target and Bidder will use reasonable endeavours to agree a proposed course of action to obtain any consents or confirmations required (which, among other things, will have due regard to applicable legal restrictions) and then, if agreed between Bidder and Target as part of the agreed course of action, Target will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required. Bidder must not contact any counterparties regarding the relevant consents or confirmations required without Target being present or without Target's prior written consent (which consent must not be unreasonably withheld, conditioned or delayed). Target may only disclose that information contained in the announcement referred to in clause 9 unless agreed otherwise by Bidder (acting reasonably).
- (b) Bidder will cooperate with, and provide reasonable assistance to, Target to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause 5.8 requires Target or Bidder to incur material expense).
- (c) Bidder must use reasonable endeavours to comply with any reasonable requirements of the counterparties that are reasonably necessary to obtain the relevant consent or confirmation, including providing any information reasonably required and considering in good faith any counterparty requirement to enter into parent guarantees or provide such

other forms of guarantee or security as counterparties may require, and make officers and employees available, where necessary to meet with counterparties to deal with any issues arising in relation to the matter.

- (d) The mere fact that a third party does not provide any requested third party consent or confirmation, or the exercise of a termination right by a third party, will not of itself, constitute a breach of this Agreement by Target.

5.9 Directors' and officers' insurance, access and indemnities

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of each member of the Target Group and each other person who is a director or officer of Target or a Subsidiary of Target that it will:
 - (i) for a period of seven years from the Implementation Date or until a company ceases to be part of the Target Group (whichever is earlier), ensure that the constitutions of Target and each other member of the Target Group continues to contain such rules as are contained in those constitutions at the date of this Agreement that provide for each company to indemnify each of its current and previous 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 Target Group; and
 - (ii) procure that each member of the Target Group complies with any deeds of indemnity, access and insurance made by them prior to the date of this Agreement in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover (or equivalent insurance coverage) for such directors and officers is maintained, for a period of seven years from the retirement date of each director and officer.
- (b) Bidder acknowledges that, notwithstanding any other provision of this document, Target may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such seven year period referred to in clause 5.9(a)(ii) which may include cover for securities claims against Target or any Target director or officer (**D&O Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not, by themselves, be a Target Material Adverse Change or Target Prescribed Occurrence or a breach of any provision of this Agreement, 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:
 - (i) Target uses reasonable endeavours to place the D&O Policy on reasonable commercial terms; and
 - (ii) subject to any confidentiality obligation, Target must keep Bidder informed of material progress in relation to the D&O Policy, and consult reasonably with Bidder in relation to the applicable D&O Policy prior to securing the relevant policy.
- (c) The undertakings contained in clause 5.9(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 5.9(a), to the extent it relates to the other Target Parties, as trustee for them.

- (e) The undertakings contained in clause 5.9(a) are given until the earlier of the end of the relevant period specified in clause 5.9(a) or the relevant member of the Target Group ceasing to be part of the Target Group.

6 Target Board recommendation

6.1 Recommendation and Voting Statement

- (a) Subject to clause 6.1(b), Target must ensure that:
- (i) the Target Board unanimously recommends that, in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of Target Shareholders, Target Shareholders vote in favour of the Scheme at the Scheme Meeting (the **Recommendation**);
 - (ii) the Scheme Booklet will include a statement by the Target Board to that effect, and to the effect that each Target Director will, in the absence of a Superior Proposal, vote (or procure the voting of) all Target Shares held or controlled by him or her in favour of the Scheme at the Scheme Meeting (**Voting Statement**); and
 - (iii) a Target Director does not change, withdraw or modify their recommendation under clause 6.1(a)(i) or a statement under clause 6.1(a)(ii) or make a recommendation or statement that is inconsistent with such recommendation or statement.
- (b) Clause 6.1(a) will cease to apply in either of the following circumstances:
- (i) the Independent Expert opines either prior to the despatch of the Scheme Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interests of Target Shareholders;
 - (ii) Target receives a Competing Proposal that, after all of Bidder's rights under clause 10.5 have been exhausted, constitutes a Superior Proposal; or
 - (iii) in respect of the Recommendation of any Target Director, one or more Target Directors may not make a recommendation under clause 6.1(a) or may withdraw his or her recommendation without being in breach of 6.1(a), in response to a requirement or request of the Court or a Government Agency (including ASIC or the Takeovers Panel) that the relevant Target Director withdraw from making (or withdrawing an existing) recommendation that Target Shareholders vote in favour of the Scheme at the Scheme Meeting. Target will not be in breach of this Agreement, and will not be liable to Bidder under this Agreement, solely as a result of a Target Director publicly (or otherwise) failing to make, or withdrawing a Recommendation, as permitted by this clause 6.1(b).

6.2 Qualification of Recommendation or Voting Statement

For the purposes of clauses 6.1 and 13.1(b), the following customary qualifications and explanations contained in the Scheme Booklet or any public announcement in relation to a Recommendation or Voting Statement to the effect that the Recommendation or Voting Statement is made:

- (a) in the absence of a Superior Proposal;

- (b) in respect of any public announcement issued before the issue of the Scheme Booklet, subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders;
- (c) in respect of the Scheme Booklet or any public announcements issued at the time of or after the issue of the Scheme Booklet, subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Target Shareholders; or
- (d) any public announcement or other statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board,

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Statement, or an endorsement of a Competing Proposal, and will not contravene this clause 6 or trigger a right for Bidder to terminate this Agreement under clause 13.

7 Representations and Warranties

7.1 Bidder Representations and Warranties

- (a) Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Parties) that each Bidder Representation and Warranty is true and correct.
- (b) Bidder indemnifies Target against, and must pay Target on demand the amount of, any losses, liabilities, damages, costs, charges, expenses or payment of whatever nature and however arising, suffered or incurred by any member of the Target Group as a result of, or in connection with, a breach of a Bidder Representation and Warranty.

7.2 Target Representations and Warranties

- (a) Target represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Parties) that each Target Representation and Warranty is true and correct in all material respects.
- (b) Bidder acknowledges and agrees that the Target Representations and Warranties are given subject to those matters which:
 - (i) are expressly provided for in this Agreement;
 - (ii) are Fairly Disclosed in the Due Diligence Material;
 - (iii) have been Fairly Disclosed to Bidder had Bidder conducted a searches of:
 - (A) ASIC records on 2 February 2024;
 - (B) the PPS Register on 2 February 2024; and
 - (C) the High Court of Australia, Federal Court of Australia and the Supreme Courts of New South Wales, Queensland, Victoria and South Australia on 29 November 2023; or
 - (iv) are within the actual knowledge of Bidder as at the date of this Agreement.
- (c) Target indemnifies Bidder against, and must pay Bidder on demand the amount of, any losses, liabilities, damages, costs, charges, expenses or payment of whatever nature and however arising, suffered or incurred by any member of the Bidder Group as a result of, or in connection with, a breach of a Target Representation and Warranty.

7.3 Timing of representations and warranties

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

- (a) at the date of this Agreement;
- (b) on the date of the Scheme Booklet;
- (c) on the date of the Scheme Meeting; and
- (d) at 8:00am on the Second Court Date.

7.4 Survival of representations

Each Bidder Representation and Warranty and each Target Representation and Warranty:

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

7.5 Survival of indemnities

Each indemnity in this Agreement:

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Agreement; and
- (d) survives the termination of this Agreement (but does not survive, and will be taken to have no further force or effect, following implementation of the Scheme).

8 Releases

8.1 Target Parties

- (a) Without limiting clause 11, Bidder releases its rights against, and agrees with Target that it will not make a Claim against any Target Party (other than Target) in connection with:
 - (i) any breach of any representation, covenant and warranty of Target in this Agreement; or
 - (ii) any disclosure made (at any time) by any Target Party that contains any statement which is false or misleading whether in content or by omission, except to the extent the relevant Target Party has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 8.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Target receives and holds the benefit of this clause as trustee for each other Target Party.

8.2 Bidder Parties

- (a) Target releases its rights against, and agrees with Bidder that it will not make a Claim against, any Bidder Party (other than Bidder) in connection with:
 - (i) any breach of any representation, covenant and warranty of Bidder in this Agreement; or

- (ii) any disclosure made (at any time) by any Bidder Party that contains any statement which is false or misleading whether in content or by omission, except to the extent that the relevant Bidder Party has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 8.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

9 Public Announcements

9.1 Announcement of the Transaction

- (a) Immediately after the execution of this Agreement, Target must issue a public announcement in a form previously agreed to in writing between Target and Bidder.
- (b) Subject always to the qualifications and limitations in clause 6 and elsewhere in this Agreement, the Target announcement must include the Recommendation and Voting Statement contemplated under clause 6.1.

9.2 Other public announcements

Each party must:

- (a) prior to making any public announcement or disclosure of, or in relation to, the Transaction or any other transaction the subject of this Agreement or the Scheme, to the extent reasonably practicable and lawful, consult with the other party as to the timing, form and content of that announcement or disclosure, including by giving the other party a reasonable opportunity to review the draft and taking into account all reasonable comments from them on the draft; and
- (b) not make any such public announcement or disclosure prior to such consultation, except as may be required by applicable law or the rules of any applicable stock exchange (including the ASX Listing Rules).

10 Exclusivity

10.1 No current discussions regarding a Competing Proposal

Target represents and warrants that, as at the date of this Agreement, neither it nor any of its Representatives are in any negotiations or discussions in respect of any Competing Proposal.

10.2 No-shop, no talk and no due diligence

Subject to clause 10.3, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not:

- (a) **(no shop)** solicit, invite, encourage or initiate any Competing Proposal, or any enquiries, proposal, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to, any Competing Proposal;
- (b) **(no talk)** enter into, continue or participate in negotiations or discussions with, or negotiate or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to encourage or lead to, any Competing Proposal; and
- (c) **(no due diligence)** disclose or otherwise make available to any Third Party any material non-public information relating to Target or any member of the Target Group for the

purposes of such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any Competing Proposal.

10.3 Limitation to no-talk and no-due diligence

Each of clauses 10.2(b) and 10.2(c) do not prevent Target or its Representatives from taking, or omitting to take, any action in connection with a Competing Proposal (which was not solicited, invited, encouraged or initiated in breach of clause 10.2(a)), if the Target Board has first determined in good faith that:

- (a) such Competing Proposal is, or could reasonably be expected to become, a Superior Proposal; and
- (b) after having consulted with its external legal advisers, failing to respond to such Competing Proposal would, or would be reasonably likely to, be contrary to the fiduciary or statutory duties of the Target Directors.

10.4 Notification by Target

During the Exclusivity Period, Target must promptly notify Bidder if it receives in writing any Competing Proposal, which notice must include the material terms of the Competing Proposal and must include the identity of the Third Party making the Competing Proposal.

10.5 Bidder matching right

- (a) During the Exclusivity Period, Target must not, and must procure that each member of the Target Group does not, enter into any definitive legally binding agreement, arrangement or understanding pursuant to which Target or any member of the Target Group agrees to undertake, implement or give effect to a Competing Proposal, unless:
 - (i) the Competing Proposal is in a form which is able to be accepted by Target as to give rise to a legally binding commitment, and the Target Board, acting reasonably and in good faith in order to satisfy what the Target Board reasonably considers to be its statutory and fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal would be or would likely be a, actual, proposed or potential Superior Proposal;
 - (ii) Target has provided Bidder with the terms and conditions of the Competing Proposal, including price and the identity of the Third Party making the Competing Proposal in accordance with clause 10.4, and has provided guidance to Bidder as to any terms and conditions that Bidder would need to propose to Target in order to provide a matching outcome for Target Shareholders as a whole as compared to the Competing Proposal;
 - (iii) Target has given Bidder until the Matching Date to provide a counter-proposal to the terms of the Competing Proposal (***Bidder Counter Proposal***); and
 - (iv) either:
 - (A) Bidder has not announced or provided to Target a Bidder Counter Proposal by the end of the Matching Date; or
 - (B) Bidder has, by the end of the Matching Date, announced or provided to Target a Bidder Counter Proposal and the Target Board has determined, acting reasonably and in good faith, that the Bidder Counter Proposal does not provide an equivalent or superior outcome for Target Shareholders compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counter Proposal.

- (b) Target agrees that each successive modification of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under clause 10.5(a), and that the process set out in this clause 10.5 must again be followed in respect of any such new Competing Proposal.
- (c) If, by the end of the Matching Date, Bidder has announced or provided to Target a Bidder Counter Proposal, Target must use reasonable endeavours to procure that the Target Board reviews the Bidder Counter Proposal and, if the Target Board, acting reasonably and in good faith, determines that the Bidder Counter Proposal provides an equivalent or superior outcome for Target Shareholders compared with the Competing Proposal, then:
 - (i) Target and Bidder must use their best endeavours to agree the amendments to this Agreement, the Scheme and the Deed Poll that are reasonably necessary to reflect the Bidder Counter Proposal, as soon as reasonably practicable; and
 - (ii) Target must use its reasonable endeavours to ensure that the Target Board continues to unanimously recommend the Transaction (as modified by the Bidder Counter Proposal) to Target Shareholders (other than as provided for by this Agreement).
- (d) Despite any other provision in this Agreement, any public announcement or other statement by Target, the Target Board or any director of Target to the effect that:
 - (i) the Target Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 10.5; or
 - (ii) Target Shareholders should take no action pending the completion of the matching right process set out in this clause 10.5,
 does not:
 - (iii) constitute a failure to make, or an adverse change, withdrawal adverse modification or adverse qualification of, a Recommendation or Voting Statement or an endorsement of a Competing Proposal;
 - (iv) contravene clause 6 or any other provision of this Agreement;
 - (v) give rise to an obligation to pay the Target Break Fee under clause 11; or
 - (vi) give rise to a termination right under clause 13 or any other provision of this Agreement.

10.6 Compliance with law

- (a) This clause 10 imposes obligations on Target 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; or
 - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the Target Board's fiduciary or statutory duties),
 subject to all proper avenues of appeal and review, judicial or otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a Court for, or in relation to, a declaration or determination of a kind referred to in clause 10.6(a) and, in the event that any such application is made by a Third Party, must take all reasonable steps (including by making submissions

against the declaration or determination) to ensure that any such determination is not made or applies to the minimum extent possible.

10.7 Normal provision of information

Nothing in this clause 10 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) engaging with its shareholders (in their capacity as a shareholder), in the ordinary course and consistent with past practice, provided that such engagement does not relate to Target or any of its Representatives soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal;
- (e) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
- (f) making presentations to, and responding to enquiries from, brokers, portfolio investors, analysts and other third parties in the ordinary course of business, provided that such engagement does not relate to Target or any of its Representatives soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal.

11 Target Break Fee

11.1 Background

This clause 11 has been agreed to in circumstances where:

- (a) Target believes the implementation of the Scheme will provide significant benefits to it and its shareholders, and acknowledges that, if Bidder enters into this Agreement and the Scheme is subsequently not implemented, Bidder will have incurred significant costs, including those set out in clause 11.5;
- (b) Bidder requested provision be made for the relevant payment outlined in this clause 11, without which it would not have entered into this Agreement;
- (c) the Target Board believes that it is appropriate to agree to the payment referred to in this clause 11 to secure Bidder's entry into this Agreement; and
- (d) Target has received separate legal advice in relation to this Agreement and the operation of this clause 11.

Target and Bidder 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 Target Break Fee is a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Bidder.

11.2 Payment of Target Break Fee

Subject to clause 11.3 and 11.6, Target must pay Bidder the Target Break Fee if:

- (a) at any time before the commencement of the Second Court Date, any Target Director:
 - (i) fails to make the Recommendation or Voting Statement in the manner contemplated by clause 6.1(a);

- (ii) withdraws or adversely changes, modifies or qualifies their Recommendation or Voting Statement; or
- (iii) makes any public statement to the effect that they recommend, support or endorse a Competing Proposal, including by making a public statement recommending that Target Shareholders accept or vote in favour of a Competing Proposal of any kind;

in each case provided that Bidder has terminated this Agreement in accordance with clause 13.1(b), unless:

- (iv) the Independent Expert concludes that the Scheme is not in the best interests of Target Shareholders (except in circumstances where the sole or predominate reason for that conclusion is the announcement or publication of a Superior Proposal);
 - (v) the withdrawal is permitted by clauses 6.1(b)(iii); or
 - (vi) Target is (or would have been) entitled to terminate this Agreement pursuant to clause 13.1(a) or the Agreement is otherwise terminated under clause 13.2;
- (b) at any time before the commencement of the Second Court Date, a Competing Proposal is announced by a Third Party and, within one year after that occurring, the Third Party or any one or more Associate(s) of the Third Party:
- (i) completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or
 - (ii) has a Relevant Interest in at least 50% of Target Shares under a transaction that is or has become wholly unconditional or otherwise comes to control (within the meaning of section 50AA of the Corporations Act) Target or acquires substantially all of the assets of Target,
- unless Bidder has terminated this Agreement under clause 13.1(b)(i); or
- (c) Bidder validly terminates this Agreement under clauses 13.1(a)(i).

11.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 11.2, no amount is payable under that clause if the Scheme becomes Effective.
- (b) Target can only ever be liable to pay the Target Break Fee once.

11.4 Timing of payment

If the Target Break Fee is payable under this clause 11, Target must pay the Target Break Fee without set-off or withholding (unless required by law) within five Business Days of receipt of a demand for payment from Bidder.

11.5 Nature of payment

The amount payable by Target to Bidder under clause 11.2 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) opportunity costs incurred in pursuing the Transaction, or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives,

incurred by Bidder.

11.6 Compliance with law

- (a) This clause 11 imposes obligations on Target 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 unlawful by a court,
 subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 11.6(a).

11.7 Target's limitation of liability

- (a) Notwithstanding any other provision of this Agreement but subject always to clause 11.7(b):
 - (i) the maximum aggregate liability of Target to Bidder under or in connection with this Agreement including in respect of any breach of this Agreement (other than in respect of a breach of clause 10) will be the amount of the Target Break Fee;
 - (ii) a payment by Target of the Target Break Fee in accordance with this clause 11 represents the sole and absolute liability of Target to Bidder under or in connection with this Agreement (other than in respect of a breach of clause 10) and no further damages, fees, expenses or reimbursements of any kind will be payable by Target to Bidder in connection with this Agreement; and
 - (iii) the amount of the Target Break Fee payable to Bidder under this clause 11 will be reduced by the amount of any loss or damage recovered by Bidder in relation to a breach of any other clause of this Agreement (except in relation to any loss or damage recovered in respect of a breach of clause 10).
- (b) Clause 11.7(a) does not limit the liability of Target under or in connection with this Agreement in respect of any breach of its obligations contained in clause 10, fraud or wilful breach of this Agreement by Target.
- (c) Nothing in this clause 11.7 will limit Bidder's ability to apply to a court for specific performance or injunctive relief or any other remedies (other than damages) which would otherwise be available in equity or law as a remedy for breach or threatened breach of this Agreement by any party.

12 Reverse Break Fee

12.1 Background

This clause 12 has been agreed to in circumstances where:

- (a) Bidder believes the implementation of the Scheme will provide significant benefits to it and its shareholders, and acknowledges that, if Target enters into this Agreement and the

Scheme is subsequently not implemented, Target will have incurred significant costs, including those set out in clause 12.5;

- (b) Target requested provision be made for the relevant payment outlined in this clause 12, without which it would not have entered into this Agreement.

Target and Bidder acknowledge and agree that the costs actually incurred by Target as referred to in clause 12.1(a) will be of such nature that they cannot be accurately ascertained, but that the Reverse Break Fee is a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Target.

12.2 Payment of Reverse Break Fee

Subject to clause 12.3 and 12.6, Bidder must pay Target the Reverse Break Fee if the Target has terminated this Agreement pursuant to clause 13.1(a)(i).

12.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 12.2, no amount is payable under that clause if the Scheme becomes Effective.
- (b) Bidder can only ever be liable to pay the Reverse Break Fee once.

12.4 Timing of payment

If the Reverse Break Fee is payable under this clause 12, Bidder must pay the Reverse Break Fee without set-off or withholding (unless required by law) within five Business Days of receipt of a demand for payment from Target.

12.5 Nature of payment

The amount payable by Bidder to Target under clause 12.2 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) opportunity costs incurred in pursuing the Transaction, or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives,

incurred by Target.

12.6 Compliance with law

- (a) This clause 12 imposes obligations on Target 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 unlawful by a court,
 subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 12.6(a).

12.7 Bidder's Limitation of Liability

- (a) Notwithstanding any other provision of this Agreement but subject always to clause 12.7(b):
- (i) the maximum aggregate liability of Bidder to Target under or in connection with this Agreement including in respect of any breach of this Agreement will be the amount of the Reverse Break Fee;
 - (ii) a payment by Bidder of the Reverse Break Fee in accordance with this clause 12 represents the sole and absolute liability of Bidder to Target under or in connection with this Agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to Target in connection with this Agreement; and
 - (iii) the amount of the Reverse Break Fee payable to Target under this clause 12 will be reduced by the amount of any loss or damage recovered by Target in relation to a breach of any other clause of this Agreement.
- (b) Clause 12.7(a) does not limit the liability of Bidder in connection with fraud or wilful breach of this Agreement by Bidder.
- (c) Nothing in this clause 12 will limit:
- (i) Bidder's liability to Scheme Shareholders under the Deed Poll; or
 - (ii) Target's or a Scheme Shareholder's ability to apply to a court for specific performance or injunctive relief or any other remedies (other than damages) which would otherwise be available in equity or law as a remedy for breach or threatened breach of this Agreement by any party.

12.8 Reduction in amount payable

- (a) The Reverse Break Fee is reduced by an amount equal to the amount which is recovered by Target as a result of a claim against Bidder pursuant to any other remedies available to Target under this Agreement.
- (b) Where the Reverse Break Fee has already been paid, Target must, within 5 Business Days of the event contemplated by clause 12.8(a) which would have reduced the amount payable, refund an amount to Bidder which is equivalent to that calculated under clause 12.8(a).

13 Termination

13.1 General rights

- (a) Either Target or Bidder (**terminating party**) may terminate this Agreement by written notice to the other at any time before 8:00am on the Second Court Date:
- (i) if:
 - (A) either:
 - (1) the other party is in material breach of any provision of this Agreement (other than a Bidder Representation and Warranty or a Target Representation and Warranty not being true and correct); or
 - (2) a representation and warranty given by the other party(s) (being the Bidder Representations and Warranties where the 'other

- party' is Bidder, and being the Target Representations and Warranties where the 'other party' is Target) is not true and correct, where that breach of representation and warranty is material in the context of the Transaction as a whole;
- (B) the terminating party has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this Agreement; and
 - (C) the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date); or
- (ii) in the circumstances set out in, and in accordance with, clause 3.7(b).
- (b) Bidder may terminate this Agreement by written notice to Target at any time before 8:00am on the Second Court Date if:
- (i) a third party (other than Bidder or its Associates) acquires a Relevant Interest in:
 - (A) Target Shares; or
 - (B) one or more derivative instruments in relation to Target Shares which are required to be disclosed in a substantial holding notice,

which would result (on the basis that any such derivative instruments that are required to be disclosed in a substantial holding notice are deemed to constitute a Relevant Interest) in that third party having a Relevant Interest in more than 15% of the issued voting shares in Target; or
 - (ii) any director of Target:
 - (A) fails to make the Recommendation (unless otherwise agreed by the parties in writing) or Voting Statement in the manner contemplated by clause 6.1(a);
 - (B) has changed, withdrawn or adversely modified or qualified, or made a public statement which is inconsistent with, their Recommendation or Voting Statement or has recommended or made a statement supporting or endorsing a Competing Proposal (other than as a result of the circumstances described in clause 6.1(b)(iii)); or
 - (C) has made a statement indicating that they no longer recommend the Transaction.
- (c) Without limiting Target's obligations under clause 6 and 10.5, Target may terminate this Agreement by written notice to Bidder at any time before 8:00am on the Second Court Date if a majority of the Target Board withdraws their recommendation that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in circumstances where they are permitted to do so under clause 6.1(b), and, if required to pay the Target Break Fee as a result of such withdrawal, Target has paid Bidder the Target Break Fee.

13.2 Automatic termination

Without limiting any other term of this Agreement, this Agreement will terminate automatically if, at the Scheme Meeting, Target Shareholders do not pass the resolution to approve the Scheme in accordance with the requirements of section 411(4)(a)(ii) of the Corporations Act provided that in circumstances where the failure to attain the required majorities occurs only because of a

failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then this Agreement will not terminate until either:

- (a) the parties' rights to serve a notice under clause 3.7(c) have expired; or
- (b) the Court has determined not to exercise its discretion referred to in section 411(4)(a)(ii)(A).

13.3 Effect of termination

If this Agreement is terminated by Target or Bidder under clauses 3.7(b), 4.6, 4.9(f) or 13.1 or terminates pursuant to clause 13.2, this Agreement will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause 13 and of clauses 1, 7.4, 7.5, 8, 11, 14, 15 and 16 which will remain in force after the termination.

13.4 Termination by written agreement

Target and Bidder may terminate this Agreement by another written agreement between them.

14 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Agreement save that the terms of this Agreement will prevail over the Confidentiality Agreement to the extent of any inconsistency.

15 GST

15.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay to the supplier an additional amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply in accordance with the GST Law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time and in the same manner that the other consideration for the supply is provided. This clause 15 does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

15.2 Liability net of GST

Unless expressly stated otherwise, where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability incurred by a party, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that party (or its representative member) in relation to the relevant cost, expense or other liability.

15.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this Agreement, the GST Amount will be recalculated in accordance with the GST Law to reflect that adjustment and an appropriate payment will be made between the parties. The supplier agrees to issue an adjustment note.

15.4 Cost exclusive of GST

Any reference in this Agreement to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

15.5 Survival

This clause 15 will not merge upon completion and will continue to apply after expiration or termination of this Agreement.

15.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause 15 that have a specific meaning in the GST Law will have the same meaning in this clause 15.

16 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient:
 - (i) by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender; or
 - (ii) by email to the email address below or the email address last notified by the intended recipient to the sender:

to Bidder:	Address:	Suite 3, Level 21, 1 York Street, Sydney NSW 2000
	Email:	[REDACTED]
	Attention:	Weiwei Shi
to Target:	Address:	Suite 5, Level 29, 225 George St Sydney NSW 2000
	Email:	[REDACTED]
	Attention:	Charles Huang
- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of delivery by email, the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, during that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

For personal use only

- (iv) on a day that is not a business day in the place to which the Notice is sent or later than 5:00pm (local time), then it will be taken to have been duly given or made at the start of business on the next business day in that place; or
- (v) before 9:00am (local time) on a business day in the place to which the Notice is sent, then it will be taken to have been duly given or made at 9:00am (local time) on that business day in that place.

17 General Provisions

17.1 Amendment

This Agreement may be amended only by another Agreement executed by all the parties.

17.2 Assignment

- (a) Subject to clause 17.2(b), a party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this Agreement, or attempt or purport to do so, without the prior consent of the other party.
- (b) Bidder may in its absolute discretion assign its rights or obligations under this Agreement to any other member of the Bidder Group at any time prior to the First Court Date.

17.3 Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement, the Scheme, the Deed Poll or Note Trust Deed and any instrument executed under or any transaction evidenced by this Agreement, the Scheme, the Deed Poll or Note Trust Deed must be borne by Bidder, and Bidder indemnifies Target against any liability arising from or in connection with any failure by it to comply with clause 17.3.

17.4 Withholding

- (a) If Bidder is required under any Tax Law, including by Subdivision 14-D of Schedule 1 of the Taxation Administration Act 1953 (Cth) (Subdivision 14-D) to make any withholding, deduction or payment for or on account of Tax, including to pay amounts to the Commissioner of Taxation in respect of the acquisition of Scheme Shares from certain Scheme Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.
- (b) Target agrees that Bidder may approach the Australian Taxation Office 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. Bidder agrees:
 - (i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office, and will take into account all reasonable comments made by Target on those materials, and more generally to take into account Target's comments in relation to Bidder's engagement with the Australian Taxation Office, and provide Target, at Target's written request, a reasonable opportunity to be a party to any discussions

between Bidder and the Australian Taxation Office in connection with the application of Subdivision 14-D to the Transaction; and

- (ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without Target's prior written consent.
- (c) 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 Australian Taxation Office following any process described in clause 17.4(b).

17.5 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

17.6 Entire agreement

This Agreement, the Confidentiality Agreement and any other documents specified by the parties for the purposes of this clause 17.6 contain the entire agreement between the parties with respect to their subject matter. This Agreement, the Confidentiality Agreement and any other documents specified by the parties for the purposes of this clause 17.6 set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

17.7 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transactions contemplated by it.

17.8 Governing law

This Agreement is governed by the laws of New South Wales.

17.9 Arbitration

Any dispute, controversy or Claim arising out of, relating to or in connection with this Agreement, including any question as to its existence, validity or termination, but excluding matters which are subject to the dispute resolution mechanism set out in clause 2.12 of Schedule 5, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of the arbitration will be Sydney, Australia. The language of the arbitration will be English.

17.10 No merger

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

17.11 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

17.12 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not

invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

For personal use only

Schedule 1**Bidder Representations and Warranties**

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this Agreement to carry out the transactions contemplated by this Agreement.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and the performance of this Agreement by it and to carry out the transactions contemplated by this Agreement.
- 4 **(Documents binding)** This Agreement is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this Agreement and each transaction contemplated by this Agreement did not and will not violate any provision of:
- (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any members of the Bidder Group; or
 - (b) its constituent documents.
- 6 **(Solvency)** No member of the Bidder Group is affected by an Insolvency Event.
- 7 **(Scheme Booklet)** At the time the Scheme Booklet is despatched to Target Shareholders, the Bidder Information provided for inclusion in the Scheme Booklet (in the form consented to by Bidder) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 8 **(Basis of Bidder Information)** The Bidder Information (in the form consented to by Bidder):
- (a) will be provided to Target in good faith and on the understanding that Target and each other Target Party will rely on that information for the purposes of preparing the Scheme Booklet and determining to proceed with the Transaction; and
 - (b) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations and ASIC Regulatory Guide 60,
- and all information provided by Bidder to the Independent Expert has been, as at the date that information is provided, provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- 9 **(New information)** The Bidder will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission).
- 10 **(No regulatory approvals):** No approval from any Government Agency is required to be obtained by Bidder in order to execute and perform this Agreement, other than the FIRB Approval.
- 11 **(No regulatory action)** As at the date of this Agreement, no regulatory action of any nature of which Bidder is aware has been taken or threatened that may prevent or in any way restrict its liability to fulfil its obligations under this Agreement, the Scheme or the Deed Poll.

- 12 **(No shareholder approvals)** No approvals are required from shareholders of Bidder, or from any shareholders of any other member of the Bidder Group, to execute, deliver or perform this Agreement or the Deed Poll.
- 13 **(No Voting Power)** No member of the Bidder Group nor any of their Associates has any Voting Power in, or any right to acquire, any Target Shares (whether issued or not or held by Bidder or not), and no member of the Bidder Group nor any of their Associates, have entered into any agreement, arrangement or understanding that confers rights or interests the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of Target Shares or any member of the Target Group or of any assets of the Target Group or any of its Related Bodies Corporate (including cash-settled derivative contracts, contracts for difference or other derivative contracts).
- 14 **(No dealings with Target Shareholders):** No member of the Bidder Group has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive any collateral benefit in relation to the Scheme, or under which the Target Shareholder has agreed to vote in favour of the Scheme (or against any Competing Proposal).
- 15 **(No dealings with Target directors):** Other than as disclosed to Target and approved by the Target Board, no member of the Bidder Group has any agreement, arrangement or understanding with any director of Target relating in any way to the Transaction or operations of Target after the Effective Date.
- 16 **(Reasonable basis)** As at the date of this Agreement, Bidder has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements) to satisfy Bidder's obligations to pay the Initial Scheme Consideration in accordance with its obligations under this Agreement, the Scheme and the Deed Poll.
- 17 **(Unconditional cash reserves)** By 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to, or which will cease to apply or be satisfied following, the approval of the Court and other conditions within the control of Bidder) sufficient cash reserves (whether from internal cash reserves or external funding arrangements) to satisfy Bidder's obligations to pay the Initial Scheme Consideration in accordance with its obligations under this Agreement, the Scheme and the Deed Poll.

Schedule 2

Target Representations and Warranties

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this Agreement to carry out the transactions contemplated by this Agreement.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Agreement by it and to carry out the transactions contemplated by this Agreement.
- 4 **(Agreement binding)** This Agreement is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this Agreement and each transaction contemplated by this Agreement did not and will not violate any provision of:
 - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Subsidiaries; or
 - (b) its Constitution or other constituent documents.
- 6 **(Solvency)** No member of the Target Group is affected by an Insolvency Event.
- 7 **(Target Shares)**
 - (a) As at the date of this Agreement, Target has 11,342,857 Target Shares on issue and there are no other securities, issued and outstanding at the date of this Agreement.
 - (b) No member of the Target Group is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other member of the Target Group.
 - (c) As at the Scheme Record Date, there will be no more than 11,342,857 Target Shares on issue and there will be no other securities or Rights on issue or outstanding.
- 8 **(Scheme Booklet)** At the time the Scheme Booklet is despatched to Target Shareholders, the information contained in the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 9 **(Continuous disclosure)** Target has complied with its continuous disclosure obligations under ASX Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in ASX Listing Rule 3.1A to withhold any material information from public disclosure.
- 10 **(No material breach of laws)** No member of the Target Group is in material breach of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Government Agencies having jurisdiction over it.
- 11 **(No default)** As at the date of this Agreement, no member of the Target Group is in material default under any Key Contract where such default would give another party a termination right or a claim for material damages under any such Key Contract.
- 12 **(Reliance)** The Target Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme.

- 13 **(Material licences and authorisations)** The Target Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this Agreement.
- 14 **(Due Diligence Material)** The Due Diligence Material has been collated and prepared in good faith, and no information contained in the Due Diligence Material is false or misleading in any material respect (including by omission). Target has not intentionally withheld information from disclosure to Bidder which could reasonably be expected to be material to Bidder's evaluation of the Target Group and the merits of the Transaction (including full details of all fees, costs and expenses which Target (or any other member of the Target Group) has paid or agreed to pay, or may become liable to pay, to Advisers in connection with the Transaction). For the avoidance of doubt, Target makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Due Diligence Material for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisition, which are matters of which Bidder has to satisfy itself.
- 15 **(No Encumbrances)** As at the date of this Agreement, there are no material Encumbrances over all or any of Target's assets or revenues (other than any Permitted Encumbrances).
- 16 **(No litigation)** No person has announced, commenced or threatened any claim, dispute or litigation (including any court proceeding, arbitration or expert determination) against a member of the Target Group that is still outstanding as at the date of this Agreement and will or is reasonably likely to have a material impact on the operational or financial performance of the Target Group.
- 17 **(No enforcement action)** As at the date of this Agreement, as far as the Target is aware, no enforcement action or investigation has been announced or commenced by an issuer of a Material Licence against or involving a member of the Target Group, which will or is reasonably likely to have a material adverse impact on the operational or financial performance of the Target Group.
- 18 **(Management Accounts)** The Management Accounts that have been prepared since 30 June 2023 have been prepared on a basis consistent with the preparation of the consolidated audited financial statements of the Target Group for the year ended 30 June 2023.

Schedule 3

Target Prescribed Occurrences

- 1 Target converts all or any of its shares into a larger or smaller number of shares.
- 2 Target resolves to reduce its share capital in any way.
- 3 Target:
 - (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 Any member of the Target Group issues shares or other securities or Rights to a person, or grants an option over or a right to receive its shares or other securities or Rights, or agrees to make such an issue or grant such an option or right.
- 5 Any member of the Target Group issues, or agrees to issue, convertible notes or any other instrument or security convertible into shares or securities in or of any member of the Target Group.
- 6 Any member of the Target Group disposes, or agrees to dispose, of the whole or a substantial part of the business or property of the Target Group.
- 7 Any member of the Target Group grants, or agrees to grant, a security interest in or over the whole or a substantial part of the business or property of the Target Group (other than as Fairly Disclosed in the Due Diligence Materials or for the purpose of securing financial indebtedness where permitted under clause 5.5(i)(i)(C)).
- 8 Any member of the Target Group resolves to be wound up.
- 9 A liquidator or provisional liquidator of any member of the Target Group is appointed.
- 10 A court makes an order for the winding up of any member of the Target Group.
- 11 An administrator of any member of the Target Group is appointed under section 436A, 436B or 436C of the Corporations Act.
- 12 Any member of the Target Group executes a deed of company arrangement.
- 13 A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Target Group.
- 14 Target makes or declares any distribution other than a Permitted Distribution or Permitted Interim Distribution.
- 15 Target adopts a new constitution or modifies or repeals its constitution or a provision of it.
- 16 Any member of the Target Group authorising, agreeing, committing or resolving to do any of the matters set out in this Schedule 3.

Schedule 4

Timetable

Event	Date
Submit draft Scheme Booklet and Independent Expert's Report to ASIC for review	X
Bidder and Note Guarantor to execute Deed Poll	X + 12 Business Days
First Court Date	X + 13 Business Days
Despatch of Scheme Booklet to Target Shareholders	X + 14 Business Days
Delivery of Draft Interim Balance to Bidder	15 Business Days before Scheme Meeting
Scheme Meeting	Y
Second Court hearing for Scheme	Z
Effective Date & cessation of trading of Target Shares	Z + 1 Business Day
Delivery of Draft Pro Rata Adjustment to Bidder	Effective Date (Z + 1 Business Day)
Determination of Permitted Distribution	Z + 4 Business Days
Announcement of Permitted Distribution	Z + 8 Business Days
Permitted Distribution Record Date	Z + 15 Business Days
Distribution Payment Date	Z + 25 Business Days
Scheme Record Date	Z + 27 Business Days
Implementation Date	Z + 32 Business Days

For personal use only

Schedule 5

Earn Out Scheme Consideration

1 Definitions and Interpretation

Terms used in this Schedule 5 have the meanings given in clause 1.1 of this Agreement and as set out below, unless the context requires otherwise.

Accounting Principles means the principles, policies and procedures to be applied in calculating EBITDA as set out in Annexure A of this Schedule 5.

Accounts means a set of special purpose, unaudited, consolidated financial statements of the Target Group for each calendar month of the Earn Out Period prepared by Target in accordance with clause 2.5 of this Schedule 5.

Actual EBITDA has the meaning given in Annexure G to Schedule 5.

Calculation Period has the meaning given in clause 2.1(a) of this Schedule 5.

CovaU P&L Statement means the means the profit and loss statement for CovaU for the period ended 30 June 2023 as annexed to this Schedule 5 as Annexure C.

Disputed Matter has the meaning given in clause 2.12(b) of this Schedule 5 (and as modified by clause 2.4(h) of this Schedule 5 as applicable).

Dispute Deadline has the meaning given in clause 2.12(b) of this Schedule 5 (and as modified by clause 2.4(h) of this Schedule 5 as applicable).

Dispute Notice has the meaning given in clause 2.12(b) of this Schedule 5 (and as modified by clause 2.4(h) of this Schedule 5 as applicable).

Draft Certificate has the meaning given in clause 2.6 of this Schedule 5.

Earn Out Calculation Date has the meaning given in clause 3.1 of this Schedule 5.

Earn Out Payment Period has the meaning given in clause 3.1 of this Schedule 5.

Earn Out Period means the period commencing on the Earn Out Period Commencement Date and expiring on the earlier of:

- (a) the date that is the third anniversary of the Earn Out Period Commencement Date; and
- (b) the date that all EBITDA Capstones have been satisfied in accordance with this Schedule 5.

Earn Out Period Commencement Date means the date that is the last day of the calendar month in which the Implementation Date occurs.

EBITDA means earnings before interest, tax, depreciation and amortisation, calculated in accordance with the Accounting Principles and for the purpose of this Schedule 5 will be the Notional Adjusted EBITDA or Actual EBITDA determined to apply in accordance with Annexure G of this Schedule 5.

EBITDA Capstone has the meaning given in the table in clause 2.1(a) of this Schedule 5.

Final Certificate has the meaning given in clause 2.11 of this Schedule 5.

iGeno means iGeno Pty Ltd (ACN 080 675 485).

iGeno P&L Statement means the profit and loss statement for iGeno for the period ended 30 June 2023 as annexed to this Schedule 5 as Annexure D.

Independent Expert means a chartered accountant who is a partner in a big 4 accounting firm, which firm is not, and has not in the previous 3 years been, the auditor to either the Bidder Group or the Target Group, or such other person as may be agreed in writing between Bidder and the Scheme Shareholder Nominee.

Kinect means Kinect Inc., a corporation organised and existing under the laws of the Republic of the Philippines.

Kinect P&L Statement means the profit and loss statement for Kinect for the period ended 30 June 2023 as annexed to this Schedule 5 as Annexure E.

Notional Adjusted EBITDA has the meaning given in Annexure G to this Schedule 5.

Power Purchase Adjustment means the adjustment contemplated in clause 2.3(a) of this Schedule 5.

Registered Address means, in relation to a Scheme Shareholder, the address of that Scheme Shareholder shown in the Target Share Register.

Scheme Shareholder Nominee means:

- (a) Charles Huang; or
- (b) if Charles Huang is no longer willing or available to perform the obligations and functions of a Scheme Shareholder Nominee, Greg McCann; or
- (c) if either Charles Huang or Greg McCann are no longer willing or available to perform the obligations and functions of a Scheme Shareholder Nominee, Bing Zhou; or
- (d) if either Charles Huang, Greg McCann or Bing Zhou are no longer willing or available to perform the obligations and functions of the Scheme Shareholder Nominee, the Scheme Shareholder holding the greatest number of Notes who is willing and available to perform this role,

subject to, in each case, the abovenamed persons executing a deed poll in the form set out in Annexure J of this Schedule 5.

Target P&L Statement means the profit and loss statement for the Target for the period ended 30 June 2023 as annexed to this Schedule 5 as Annexure B.

Tax Expert means an individual with at least 20 years' experience in Tax and either:

- (e) agreed by Bidder and the Target in accordance with clause 2.12(e) of this Schedule 5 (as modified by clause 2.4(h) of this Schedule 5); or
- (f) if the parties fail to agree within 20 Business Days of a Dispute Notice being served, the person appointed in accordance with clause 2.12(f) of this Schedule 5 (as modified by clause 2.4(h) of this Schedule 5).

Trust Account Earn Out means an Australian dollar denominated trust account held with an Australian bank operated by the Note Trustee as trustee for the Scheme Shareholders (or a delegate or agent of the Note Trustee).

2 Calculation of Earn Out Scheme Consideration

2.1 Capstones

- (a) The amount of the Earn Out Scheme Consideration payable by Bidder is determined by reference to the EBITDA (as adjusted pursuant to clause 2.3 of this Schedule 5, if applicable) of the Target Group in rolling 12 month periods (provided that each 12 month period ends on the last day of a calendar month, the first of which must not pre-date the

Earn Out Period Commencement Date) (a **Calculation Period**) within the period of three years commencing on the Earn Out Period Commencement Date.

- (b) Subject to clause 2.2 of this Schedule 5, Bidder must pay the Earn Out Scheme Consideration indicated in the table below on the satisfaction of each applicable EBITDA Capstone:

	EBITDA Capstone 1	EBITDA Capstone 2	EBITDA Capstone 3
EBITDA (as adjusted pursuant to clause 2.3 of this Schedule 5, if applicable) of the Target Group in the relevant Calculation Period (\$m) (EBITDA Capstone)	\$18	\$24	\$30
Earn Out Scheme Consideration (\$m)	\$16	\$16	\$18

- (c) Subject to clause 2.2 of this Schedule 5, the total Earn Out Scheme Consideration payable by Bidder is equal to the sum of corresponding amounts for each EBITDA Capstone met as set out in the table in clause 2.1(b) of this Schedule 5.
- (d) For the avoidance of doubt:
- (i) two or more EBITDA Capstones can be satisfied simultaneously;
 - (ii) for the purposes of determining if an EBITDA Capstone has been triggered following the completion of the first possible Calculation Period, the EBITDA of the Target Group must take into account the month just ended and the prior eleven months at the time of the calculation (provided that any such period does not pre-date the Earn Out Period Commencement Date);
 - (iii) for the purposes of determining whether an EBITDA Capstone is satisfied in a Calculation Period, the parties will use the higher of the Notional Adjusted EBITDA, where applicable, and the Actual EBITDA as the EBITDA for that period (as determined pursuant to clause 2.3 of this Schedule 5);
 - (iv) an EBITDA Capstone can only be triggered once throughout the Earn Out Period; and
 - (v) there is a separate right to receive each of the three amounts set out in the table in clause 2.1(b) of this Schedule 5 when each corresponding EBITDA Capstone is satisfied.

2.2 Pro rata adjustment

- (a) In the event that EBITDA Capstone 1 or EBITDA Capstone 2 (in the table in clause 2.1(b) of this Schedule 5) have been achieved in any Calculation Period, to the extent that a further EBITDA Capstone is not triggered within the Earn Out Period but the EBITDA of the Target Group in the same Calculation Period is achieved in excess of the threshold of the relevant EBITDA Capstone, the Earn Out Scheme Consideration will be adjusted to

include a pro rata proportion of the EBITDA attributable to the EBITDA Capstone which has not been met.

- (b) The adjustment in clause 2.2(a) of Schedule 5 will be calculated as follows:

$$\text{Earn Out Scheme Consideration} = A + \left(B \times \frac{C - D}{E - D} \right)$$

where:

A means the sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved in the table in clause 2.1(b) of this Schedule 5;

B means the Earn Out Scheme Consideration that applies to the next EBITDA Capstone which has not been satisfied in the table in clause 2.1(b) of this Schedule 5;

C means the EBITDA of the Target Group in the relevant Calculation Period;

D means the highest EBITDA Capstone which has been satisfied; and

E means the next EBITDA Capstone which has not been satisfied.

- (c) A worked example which demonstrates the calculation of the adjustment in clause 2.2(a) of Schedule 5 is set out in Annexure F of this Schedule 5.
- (d) The adjustment in clause 2.2(a) of Schedule 5 must be calculated after the end of the full Earn Out Period.

2.3 Power Purchase Adjustment

- (a) For the purposes of determining whether an EBITDA Capstone is satisfied in a Calculation Period, the EBITDA of the Target Group will be the higher of the Actual EBITDA and the Notional Adjusted EBITDA for that calculation period as determined in accordance with the Power Purchase Adjustment principles set out in Annexure G to this Schedule 5.
- (b) Worked examples which demonstrate the calculation of the Actual EBITDA and Notional Adjusted EBITDA in accordance with the Power Purchase Adjustment principles are set out in Annexure H of this Schedule 5.

2.4 Tax adjustment

- (a) If, following the adjustments in clauses 2.2, 2.3 and 2.12(o)(ii) of this Schedule 5, at the end of the Earn Out Period the Earn Out Scheme Consideration (for the avoidance of doubt, prior to the adjustment in this clause 2.4 of this Schedule 5) is less than the Earn Out Value, the Earn Out Scheme Consideration must be increased by an additional amount calculated in accordance with this clause 2.4 of this Schedule 5 (**Earn Out Tax Adjustment**).
- (b) The Bidder must, within 20 Business Days of the end of the Earn Out Period (or within such longer period as Bidder and Scheme Shareholder Nominee may agree in writing) (or within 5 Business Days of the expiry of the period for disputing the Earn Out Tax Adjustment, if later), deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the Earn Out Tax Adjustment, and the Note Trustee must pay each relevant Scheme Shareholder the Earn Out Tax Adjustment in accordance with the procedure set out in clause 3 of this Schedule 5, except that, if all Scheme Shareholders are not entitled to the Earn Out Tax Adjustment, the Respective

Proportion in the formula in clause 3.2 of this Schedule 5 will be the proportion calculated by reference to the total number of shares held by Scheme Shareholders entitled to receive the Earn Out Tax Adjustment (and not the total number of Scheme Shares on Issue as at the Scheme Record Date).

- (c) Target and Bidder acknowledge and agree that the purpose of the Earn Out Tax Adjustment is to ensure that each Target Shareholder is in the same notional after-tax position (calculated in accordance with clause 2.4(e) of this Schedule 5) as it would have been had the Earn Out Value been the same as the amount of the Earn Out Scheme Consideration actually paid to the Note Trustee for the account of the Target Shareholder.
- (d) The share of Earn Out Scheme Consideration for a Target Shareholder will not be adjusted for the Earn Out Tax Adjustment if that Target Shareholder's right to receive their share of Earn Out Scheme Consideration is a *look-through earnout right* as defined in the Tax Act and confirmed in the ATO Class Ruling.
- (e) For the purposes of determining the Earn Out Tax Adjustment, the parties agree that the notional after-tax position of a Target Shareholder will be calculated based on an income tax rate of 23.5%. For the avoidance of doubt, this tax rate will be applied to any relevant gain made by each Target Shareholder before the CGT discount. Notwithstanding that tax may be payable on the receipt of the Earn Out Tax Adjustment amount by a Target Shareholder, no additional amount will be payable in respect of the Earn Out Tax Adjustment and the Buyer will be deemed for all purposes to have paid the full amount of the Earn Out Adjustment Amount.
- (f) The Bidder will accept the methodology for calculating the Earn Out Value and the Earn Out Tax Adjustment determined by the ATO in the ATO Class Ruling, and will increase the Earn Out Scheme Consideration by the Earn Out Tax Adjustment in accordance with that methodology.
- (g) In the event that the ATO declines to rule on any issue relating to the methodology for calculating the Earn Out Value or the Earn Out Tax Adjustment, the Bidder will accept the Earn Out Value determined by the Independent Expert in the Earn Out Market Valuation and the parties will work in good faith to determine the Earn Out Tax Adjustment required to be paid by Bidder having regard to the Earn Out Value and the purpose of the Earn Out Tax Adjustment as described in clause 2.4(c) of this Schedule 5.
- (h) In the event that the parties cannot determine the Earn Out Tax Adjustment required to be paid by Bidder under clause 2.4(g) of this Schedule 5, it shall be a **Tax Disputed Matter**, and clause 2.12(e) – (p) of this Schedule 5 shall apply as if it were a Disputed Matter, with the following modifications:
 - (i) the Bidder or Scheme Shareholder Nominee (as applicable) may serve written notice (**Dispute Notice**) on the other within 20 Business Days of the parties being unable to determine the amount to be paid (**Dispute Deadline**);
 - (ii) all references to the 'Independent Expert' shall be taken to be references to the 'Tax Expert' and all references to the 'Final Certificate' shall be replaced with 'Earn Out Tax Adjustment';
 - (iii) the words 'the Draft Certificate and underlying calculations' shall be omitted from clause 2.12(i) and replaced with "any materials submitted to the ATO in relation to the ATO Class Ruling"; and
 - (iv) clause 2.12(o) shall be replaced with the following:

If a Dispute Notice is served, any costs of the Tax Expert and the Chair of the Resolution Institute will be shared equally between the Bidder and Target.

- (i) For the avoidance of doubt, if, and to the extent that, the Earn Out Scheme Consideration equals or exceeds the Earn Out Value, the Earn Out Scheme Consideration will not be adjusted for any Earn Out Tax Adjustment.

2.5 Accounts

As soon as reasonably practicable following the last day of each calendar month in the Earn Out Period, and in any case within 25 Business Days after the last day of the relevant calendar month, Target must prepare, in good faith, the Accounts, together with working papers which support the calculations contained in the Accounts, for each relevant calendar month using the unaudited, consolidated financial statements of the Target Group for the relevant calendar month of the Earn Out Period.

2.6 Certificate

As soon as reasonably practicable following each Calculation Period (and in any case within 35 Business Days after the relevant Calculation Period), Target must prepare, in good faith, a draft written certificate (**Draft Certificate**) in the form of Annexure I stating:

- (a) Target's calculations of the EBITDA of the Target Group including any adjustments for the Power Purchase Adjustment, in each case, as derived from the relevant Accounts and the associated relevant working papers and general ledgers; and
 - (b) the Earn Out Scheme Consideration for that Calculation Period (if applicable),
- in each case, which must include underlying calculations.

2.7 Scheme Shareholder Nominee

- (a) The parties acknowledge and agree that the Scheme Shareholders appoint the Scheme Shareholder Nominee as their nominee for the purposes of determining and agreeing the Earn Out Scheme Consideration set out in this Schedule 5.
- (b) Without prejudice to the rights of the Scheme Shareholder Nominee under clause 2.12 of this Schedule 5, each Scheme Shareholder acknowledges and agrees that only the Scheme Shareholder Nominee will be entitled to dispute matters relating to the preparation of the Draft Certificate (including the results of the calculations required to be set out in the Draft Certificate), including:
 - (i) the underlying calculations; and
 - (ii) whether each individual component of the Draft Certificate has been correctly calculated in accordance with this Schedule 5 and has been derived using the methodology set out in this Schedule 5.
- (c) Except to the extent that the Scheme Shareholder Nominee has acted fraudulently, the parties acknowledge and agree that the Scheme Shareholder Nominee will not:
 - (i) have any liability whatsoever in his or her role as a Scheme Shareholder Nominee under this Agreement, the Scheme or the Note Trust Deed in their role as a Scheme Shareholder Nominee;
 - (ii) be under any liability for anything done in accordance with a direction given to them by the Scheme Shareholders;

- (iii) be under any liability for any act, omission, neglect or default of Bidder or Target under or in connection with this Agreement, the Scheme or the Note Trust Deed; and
- (iv) be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise of any authority, discretion or power of Bidder, Target or Note Trustee.

2.8 Nominee Cost Reserve

- (a) The parties acknowledge and agree that the Scheme Shareholders direct Bidder to deposit the Nominee Cost Reserve to the Trust Account Earn Out, to be dealt with in accordance with the Note Trust Deed.
- (b) Subject to the terms of the Note Trust Deed, the Scheme Shareholder Nominee will be entitled to funds from the Nominee Cost Reserve to pay any reasonable costs incurred by the Scheme Shareholder Nominee in connection with exercising its powers or performing its obligations under the Scheme Implementation Agreement and the Scheme in its capacity as Scheme Shareholder Nominee.

2.9 Provision of documents

- (a) Target must promptly provide a copy of all relevant Accounts, the associated relevant working papers and general ledgers to the Bidder and the Scheme Shareholder Nominee as soon as reasonably practicable following the preparation of each set of Accounts pursuant to clause 2.5 of this Schedule 5.
- (b) Target must promptly provide a copy of the relevant Draft Certificate to the Bidder and the Scheme Shareholder Nominee as soon as reasonably practicable after the processes set out in clause 2.6 of this Schedule 5 are completed.

2.10 Audit of Accounts and Certificate

- (a) The Scheme Shareholder Nominee may, at any time following the provision of the Accounts to them pursuant to clause 2.8 of this Schedule 5, appoint an auditor to review and verify the Accounts and the Draft Certificate.
- (b) Upon appointment of an auditor pursuant to clause 2.10(a) of this Schedule 5, the Scheme Shareholder Nominee must promptly notify Bidder that the auditor has been appointed for the purposes of reviewing and verifying the Accounts and the Draft Certificate.
- (c) Bidder must do all things reasonably necessary to assist an auditor appointed pursuant to clause 2.10(a) of this Schedule 5 in reviewing and verifying the Accounts and the Draft Certificate, including but not limited to providing the auditor with reasonable access to anything which the auditor requires to conduct their review and verification.

2.11 Finalisation of certificate

- (a) Subject to clause 2.12 of this Schedule 5, on receipt by Bidder and Scheme Shareholder Nominee of the documents referred to in clause 2.8 of this Schedule 5 for a given Calculation Period, Bidder and the Scheme Shareholder Nominee must use their best endeavours to finalise the Draft Certificate (**Final Certificate**) and finally agree whether any Earn Out Scheme Consideration is payable in respect to the relevant Calculation Period and the amount of any such Earn Out Scheme Consideration within 45 Business Days after the end of the relevant Calculation Period (or such longer period as Bidder and the Scheme Shareholder Nominee may agree in writing). Any such agreed Final

Certificate will be conclusive, final and binding on Bidder, Target, the Scheme Shareholder Nominee and the Scheme Shareholders.

- (b) If the Final Certificate provides that each EBITDA Capstone has been triggered (being EBITDA Capstone 1, EBITDA Capstone 2 and EBITDA Capstone 3 in the table in clause 2.1(a) of this Schedule 5), the Target is no longer required to provide further Accounts or a Draft Certificate in accordance with clauses 2.5 and 2.6 of this Schedule 5.

2.12 Dispute resolution

- (a) If Bidder and the Scheme Shareholder Nominee are unable to agree the Final Certificate within 45 Business Days after the end of the Calculation Period (or within such longer period as Bidder and the Scheme Shareholder Nominee may agree in writing), then either Bidder or the Scheme Shareholder Nominee may only dispute any matters relating to the preparation and calculation of the Draft Certificate in accordance with the remaining provisions of this clause 2.12 of this Schedule 5, including:
- (i) the underlying calculations; and
 - (ii) whether each individual component of the Draft Certificate has been correctly calculated in accordance with this Schedule 5 and has been derived using the methodology set out in this Schedule 5.
- (b) If Bidder or the Scheme Shareholder Nominee wishes to dispute a matter in the Draft Certificate in accordance with this clause 2.12 of this Schedule 5, then subject to clause 2.12(c) of this Schedule 5 Bidder or the Scheme Shareholder Nominee (as applicable) must serve written notice (**Dispute Notice**) on the other within 20 Business Days following the period for finalisation of the Draft Certificate in clause 2.11(a) of this Schedule 5 (or within such longer period as Bidder and the Scheme Shareholder Nominee may agree in writing) (**Dispute Deadline**). The Dispute Notice must set out:
- (i) full and specific details of each of the matters the subject of the dispute (**Disputed Matter**);
 - (ii) a separate dollar value for each of those matters, being the Bidder's or Scheme Shareholder Nominee's (as the case may be) genuine and reasonable calculation of the dollar value for each of those matters; and
 - (iii) full and specific details of the reasons why each of those matters is disputed.
- (c) Neither Bidder nor the Scheme Shareholder Nominee may serve a Dispute Notice under clause 2.12(b) of this Schedule 5 unless the aggregate dollar value of all Disputed Matters in the Dispute Notice exceeds \$50,000.
- (d) If neither Bidder nor the Scheme Shareholder Nominee serves a Dispute Notice before the end of the Dispute Deadline, then the Draft Certificate prepared by Target under clause 2.6 of this Schedule 5 will be taken to be the Final Certificate and will be conclusive, final and binding on Bidder, Target, the Scheme Shareholder Nominee and the Scheme Shareholders.
- (e) If either Bidder or the Scheme Shareholder Nominee serves a Dispute Notice before the end of the Dispute Deadline, Bidder and the Scheme Shareholder Nominee must, within 20 Business Days after the date on which the Dispute Notice is served (or within such longer period as Bidder and the Scheme Shareholder Nominee may agree in writing), appoint an Independent Expert to determine the Disputed Matter.
- (f) If Bidder and the Scheme Shareholder Nominee are unable (for any reason) to appoint an Independent Expert within 20 Business Days after the date on which the Dispute

Notice is served (or within such longer period as Bidder and the Scheme Shareholder Nominee may agree in writing), then the selection of the Independent Expert must be referred to the Chair of the Resolution Institute.

- (g) If the selection of the Independent Expert is referred to the Chair of the Resolution Institute, each of Bidder, the Scheme Shareholder Nominee and Target must comply with all reasonable requirements of the Chair of the Resolution Institute in connection with the nomination process and in doing so must also provide the Chair of the Resolution Institute with:
- (i) a copy of the Scheme;
 - (ii) a description of the Disputed Matter to be resolved by the Independent Expert; and
 - (iii) the approximate value of, and the technical area involved in, the Disputed Matter.
- Bidder and the Scheme Shareholder Nominee must promptly engage the Independent Expert selected by the Chair of the Resolution Institute. If the Chair of the Resolution Institute nominates a list of persons to be the Independent Expert rather than one particular person, the first person named on that list will be the Independent Expert.
- (h) The Independent Expert's role is to consider and determine the Disputed Matter.
- (i) Bidder and the Scheme Shareholder Nominee must give the Independent Expert a copy of all relevant Accounts (including any audited Accounts prepared pursuant to clause 2.10 of this Schedule 5), the associated relevant working papers and associated relevant general ledgers, the Draft Certificate and underlying calculations, the Dispute Notice, the Note Trust Deed and the Scheme.
- (j) Each of Bidder and the Scheme Shareholder Nominee:
- (i) may make written submissions to the Independent Expert in respect of the review of the Disputed Matter, provided that a copy of any written submission is promptly provided to the other; and
 - (ii) must not otherwise make contact with or make submissions to the Independent Expert in relation to the Disputed Matter.
- (k) Bidder and the Scheme Shareholder Nominee must use their best endeavours to procure the Independent Expert completes its review of the Disputed Matter:
- (i) no later than 20 Business Days after it has received all of the information referred to in clauses 2.12(i) and 2.12(j) of this Schedule 5 (or within such longer period as Bidder and the Scheme Shareholder Nominee may agree in writing); and
 - (ii) in accordance with this Schedule 5.
- (l) The Scheme Shareholder Nominee, Bidder and Target must promptly supply the Independent Expert with any information, assistance and cooperation reasonably requested in writing by the Independent Expert in connection with its review of the Disputed Matter. All correspondence between the Independent Expert and either Bidder or the Scheme Shareholder Nominee must be copied to the other.
- (m) Bidder and the Scheme Shareholder Nominee must instruct the Independent Expert that, at the completion of the Independent Expert's review of the Disputed Matter, the Independent Expert must give notice in writing to Bidder and the Scheme Shareholder Nominee of its determination of the Disputed Matter.

- (n) The Independent Expert must act as an expert and not as an arbitrator and the written determination of the Independent Expert will be conclusive, final and binding on Bidder, Target, the Scheme Shareholder Nominee and the Scheme Shareholders, and the Final Certificate will reflect the Independent Expert's written determination.
- (o) If a Dispute Notice is served and:
- (i) the Independent Expert determines the Draft Certificate was incorrect, the costs of the Independent Expert and the Chair of the Resolution Institute will be borne by Bidder; or
 - (ii) the Independent Expert determines the Draft Certificate was correct, the Earn Out Scheme Consideration will be adjusted so that the costs of the Independent Expert and the Chair of the Resolution Institute will be deducted from it.
- (p) Despite any other provision to the contrary in this Schedule 5, Bidder and the Scheme Shareholder Nominee are authorised to:
- (i) resolve in writing any dispute that may arise in connection with this Schedule 5; and
 - (ii) agree in writing the Final Certificate,
- whether or not a Dispute Notice has been served. Any such resolution or agreement will be conclusive, final and binding on Bidder, Target, the Scheme Shareholder Nominee and the Scheme Shareholders.
- (q) For the purpose of this Schedule 5, the Final Certificate (and the matters set out therein) will be deemed as being finalised on:
- (i) the date on which Bidder and the Scheme Shareholder Nominee finalise and agree the Final Certificate in accordance with clause 2.11 of this Schedule 5;
 - (ii) if neither Bidder or the Scheme Shareholder Nominee serve a Dispute Notice on or before the Dispute Deadline, the last day of the Dispute Deadline in accordance with clause 2.12(b) of this Schedule 5;
 - (iii) if either Bidder or the Scheme Shareholder Nominee serve a Dispute Notice on or before the Dispute Deadline, the day on which the Independent Expert gives its written determination to Bidder and the Scheme Shareholder Nominee as referred to in clause 2.12(m) of this Schedule 5 following completion of its review of the Disputed Matter; or
 - (iv) any other date on which the Scheme Shareholder Nominee and Bidder agree in writing the Final Certificate,
- and the Final Certificate will then be conclusive, final and binding on Bidder, Target, the Scheme Shareholder Nominee and the Scheme Shareholders.

3 Entitlement to and payment of Earn Out Scheme Consideration

3.1 Deposit of Earn Out Scheme Consideration

Subject to clause 2.12 of this Schedule 5, after the Final Certificate is finalised and it has been determined that an EBITDA Capstone has been triggered which has not been triggered in a prior Calculation Period (the date of finalisation being, the **Earn Out Calculation Date**), Bidder must, within 5 Business Days of the Earn Out Calculation Date (or within such longer period as Bidder and Scheme Shareholder Nominee may agree in writing) (**Earn Out Payment Period**), deposit

(or procure the deposit) in cleared funds into the Trust Account Earn Out an amount equal to the final Earn Out Scheme Consideration as set out in the Final Certificate.

3.2 Entitlement to Earn Out Scheme Consideration

- (a) Each Scheme Shareholder is entitled to receive within 10 Business Days of the date in which Bidder deposits the Earn Out Scheme Consideration pursuant to clause 3.1 of this Schedule 5 (***Earn Out Payment Period***), an amount calculated in accordance with the following formula:

$$A = [Total\ Earn\ Out\ Scheme\ Consideration \times Respective\ Proportion]$$

Where:

A means the final share of Earn Out Scheme Consideration payable to an Scheme Shareholder, rounded down to the nearest whole cent;

Respective Proportion means, in relation to the relevant Scheme Shareholder, the proportion determined by dividing the number of Scheme Shares held by the Scheme Shareholder as at the Scheme Record Date by the total number of Scheme Shares on issue as at the Scheme Record Date; and

Total Earn Out Scheme Consideration means the Earn Out Scheme Consideration as set out in the Final Certificate.

- (b) Such entitlement of each Scheme Shareholder to the Earn Out Scheme Consideration is to be satisfied in the manner set out in clause 3.3 of this Schedule 5 and in the Scheme.

3.3 Payment of Earn Out Scheme Consideration

- (a) Promptly, and in any event, by no later than the end of the Earn Out Payment Period, subject to Bidder having satisfied its obligations in clause 3.1 of this Schedule 5, the Note Trustee (or its delegate or agent) must pay or procure the payment, from the Trust Account Earn Out, to each Scheme Shareholder the amount of the Earn Out Scheme Consideration that Scheme Shareholder is entitled to, as determined in accordance with clause 3.2(a) of this Schedule 5, net of any applicable Taxes (if any).
- (b) For the purposes of making a payment pursuant to clause 3.3(a) of this Schedule 5, Bidder must procure that:
- (i) the Note Trustee will use the information that is available for each Scheme Shareholder on the Target Share Register as at the Scheme Record Date; and
 - (ii) if there are no payment details for a Scheme Shareholder on the Target Share Register, the Note Trustee will issue a cheque to the relevant Scheme Shareholder on their instruction.

3.4 Unclaimed moneys

- (a) The *Unclaimed Money Act 1995 (NSW)* will apply to any Scheme Consideration which becomes 'unclaimed money' (as defined in Part 2 of the *Unclaimed Money Act 1995 (NSW)*).
- (b) Note Trustee (or its delegate or agent) or Target may cancel a cheque issued under clause 3.3 of this Schedule 5 if the cheque:
- (i) is returned to Note Trustee (or its delegate or agent) or Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.

- (c) During the period of one year commencing on the expiry of the Earn Out Payment Period, on request from an Scheme Shareholder to Note Trustee (or its delegate or agent) or Target (which request may not be made until the date which is 20 Business Days after the expiry of the Earn Out Payment Period), Note Trustee (or its delegate or agent) or Target must reissue a cheque that was previously cancelled under this clause.

3.5 Orders of a court or Government Agency

If:

- (a) notwithstanding anything else contained in this clause 3 of this Schedule 5, written notice is given to Target, Bidder or Note Trustee (or its delegate or agent) of an order or direction made by a court of competent jurisdiction or by another Government Agency that requires payment to a third party of a sum in respect of Earn Out Scheme Consideration that a Scheme Shareholder is otherwise entitled to in accordance with this clause 3 of this Schedule 5, then Target, Bidder or the Note Trustee (or its delegate or agent) will be entitled to direct that payment is made in accordance with that order or direction; or
- (b) written notice is given to Target, Bidder or the Note Trustee (or its delegate or agent) of an order or direction made by a court of competent jurisdiction or by another Government Agency that prevents Note Trustee (or its delegate or agent) from making a payment to any particular Scheme Shareholder in accordance with clause 3.3 of this Schedule 5, or such payment is otherwise prohibited by applicable law, Target or the Note Trustee (or its delegate or agent) shall be entitled to retain an amount, in Australian dollars, equal to the Earn Out Scheme Consideration that the relevant Scheme Shareholder would otherwise be entitled to in accordance with this clause 3 until such time as payment in accordance with this clause 3 of this Schedule 5 is permitted by that order or direction or otherwise by law.

3.6 No double counting

To the extent that the operation of, or any calculations performed under the provisions of this Schedule 5 would result in any double counting, such double counting must be excluded.

4 Scheme Shareholder Protection

4.1 Conduct during the Earn Out Period

Subject to clause 4.2 of this Schedule 5, during the Earn Out Period, Target and Bidder must:

- (a) use their best endeavours to procure that the business of the Target Group is conducted in the ordinary course in all material respects (including with respect to the management and human resourcing of the Target and the Bidder's hedging policy) excluding in relation to any actions agreed by Bidder and Target to be taken under this Agreement;
- (b) not, directly or indirectly take any action (which, for this purpose, includes knowingly failing to take any action) which has the sole or dominant purpose of reducing any Earn Out Scheme Consideration;
- (c) act in good faith and reasonably cooperate with a view to supporting the Target Group to achieve the EBITDA Capstones;
- (d) not sell, transfer, assign, novate, restructure or otherwise dispose of all or any material part of its interests in the business of the Target Group or the Target Group to any Third Party, in each case, excluding in relation to any actions agreed by Target and Bidder to be taken in this Agreement or pursuant to the grant of security to any financier;

- (e) retain the Target's "key management personnel" (as agreed in writing by Bidder and Target), subject to customary termination rights including those for misconduct and material breach; and
- (f) retain the Target's existing bonus and incentive scheme arrangements for Target employees.

4.2 Permitted conduct

Clause 4.1 of this Schedule 5 is subject at all times to:

- (a) the Bidder's overall business strategy that is designed or intended, in good faith, to expand or grow the business of the Bidder Group as a whole, including decisions regarding the allocation of resources within the Bidder Group (including for this purpose the Target Group) in aid of that strategy;
- (b) the hedging policy adopted by the Bidder from time to time. For clarity, nothing in clause 4.1 of this Schedule 5 restricts the entry by the Bidder Group (including for this purpose the Target Group) into electricity and gas market derivatives in accordance with such hedging policy);
- (c) the requirements of any applicable law, the rules of any applicable stock exchange, including ASX, or the requirements of any Government Agency;
- (d) the Bidder Group (or Target Group, if applicable) exercising its rights under any employment or service agreement for any employee due to any action or inaction of that employee; and
- (e) any urgent need for the Bidder to take action to mitigate the effects of any event outside its reasonable control that will, or could be reasonably be expected to, have a material adverse effect on any business operated by the Bidder Group (including for this purpose, the Target Group).

Annexure A – Accounting Principles

1 General

The Accounts, the Draft Certificate and the Final Certificate must be prepared in accordance with, in order of precedence:

- (a) the specific principles, policies and procedures set out in clause 2 of this Annexure A of this Schedule 5;
- (b) to the extent an item is not covered by the specific principles, policies and procedures referred to in clause 2 of this Annexure A of this Schedule 5, in a manner consistent with the principles, policies and procedures used to prepare the consolidated audited financial statements of the Target Group for the year ended on 30 June 2023; and
- (c) to the extent that the treatment of any item is not dealt with in the principles, policies and procedures referred to in clause 1(b) of this Annexure A of this Schedule 5, the Accounting Standards in force as at the time the relevant Accounts are prepared (as applicable).

2 Specific principles, policies and procedures

2.1 EBITDA inclusions

EBITDA of the Target Group will be calculated to reflect the consolidated Profit & Loss Statements for each of the Target P&L Statement, the CovaU P&L Statement, the iGeno P&L Statement and the Kinect P&L Statement.

2.2 EBITDA exclusions

For the avoidance of doubt, the EBITDA of the Target Group will not include:

- (a) any costs that are attributable to the new ownership;
- (b) any costs incurred post-transaction date relating to the de-listing of Target; and
- (c) any costs relating to the Working Capital Facility.

For personal use only

Annexure B – Target P&L Statement

For personal use only

Ordinary Income/Expense

Income

47500 · MRTM Services Revenue	1,540,006.67
48000 · Prepaid Mobile Revenue	
48001 · Prepaid Mobile Rev.	259,451.49
48002 · Prepaid Mobile Revenue - Expiry	20,549.99
48004 · Postpaid Mobile Rev	19,359.00
48000 · Prepaid Mobile Revenue - Other	8,667.75
Total 48000 · Prepaid Mobile Revenue	<u>308,028.23</u>

Total Income 1,848,034.90

Cost of Goods Sold

57000 · MRTM Costs	
57001 · MRTM Licences & Maintainences	273,899.71
Total 57000 · MRTM Costs	<u>273,899.71</u>

58000 · Prepaid Mobile Service Cost

58010 · ACMA Numbering Census Cost	45,415.08
58030 · Mobile SIM Cost	111.44
58040 · Prepaid mobile comm&bonus Cost	
58041 · Prepaid mobile bonus credit	226.38
58042 · Prepaid mobile comm	
Deferred comm	25,643.97
Prepaid mobile commission	7,282.17
Prepaid Mobile Credits	1,815.64
Prepaid mobile free cards	0.00
Prepaid Mobile Recharge Bonus	0.00
Total 58042 · Prepaid mobile comm	<u>34,741.78</u>

Total 58040 · Prepaid mobile comm&bonus Cost 34,968.16

58050 · Prepaid mobile voice - Others 54,817.19
58060 · Prepaid mobile voice - Vodafone 150,579.38

Total 58000 · Prepaid Mobile Service Cost 285,891.25

58070 · Voice Costs

Voice Cost - AUD Payment	
AAPT - Onshore	6,460.35
Total Voice Cost - AUD Payment	<u>6,460.35</u>

Total 58070 · Voice Costs 6,460.35

Total COGS 566,251.31

Gross Profit 1,281,783.59

Expense

60100 · Bad Debts	
60110 · Bad Debt Provision	54,435.47
60120 · Bad Debt Written Off	123,221.51
Total 60100 · Bad Debts	<u>177,656.98</u>

60200 · Call Centre

For personal use only

60220 · Call Matrix	85,108.32
60250 · Telecom Industry Ombudsman	745.05
Total 60200 · Call Centre	85,853.37
60300 · Finance Charges	
60310 · Bank Charges	34,058.88
60320 · Merchant Fees	20,001.38
60330 · Australia Post Fees	1,562.73
60350 · Finance Charges - Others	1,439.39
Total 60300 · Finance Charges	57,062.38
60500 · Insurance	
60510 · Ins General	43,434.88
60520 · Ins Professional Indemnities	128,545.13
60530 · Ins Worker Compensation	6,175.68
Total 60500 · Insurance	178,155.69
60600 · Miscellaneous	
60610 · Subscriptions	68,073.89
60630 · Miscellaneous - Others	62,964.47
60650 · ASX Listing & Share Registry	92,242.41
60660 · Lodgement Fees	6,318.00
Total 60600 · Miscellaneous	229,598.77
60700 · Office Administration	
60710 · Amenities	15,427.28
60720 · Mobile Phone	27,677.79
60730 · Office Equipment Lease	6,724.00
60740 · Office Internet	27,901.61
60750 · Office Phone & Fax	52,317.67
60760 · Office Supplies	14,200.04
60770 · Postage and Delivery	44,517.98
60780 · Printing and Stationery	18,359.26
Total 60700 · Office Administration	207,125.63
60900 · Premises	
60910 · Office Cleaning	3,379.07
60920 · Office Electricity, Water & Gas	13,435.09
60930 · Office Parking	68,622.08
60940 · Office Rent	66,942.96
60950 · Office Repairs & Maintenance	-2,017.10
60980 · Office Relocation	6,412.58
Total 60900 · Premises	156,774.68
61000 · Professional Services	
61010 · Accountancy & Tax Fees	196,986.00
61030 · Legal Fees	8,723.00
61040 · Consultancy Fees	130,752.00
Total 61000 · Professional Services	336,461.00
61050 · Operation & Network Cost	134,440.07
62000 · Promotion and Marketing	
Hello Mobile	
62260 · Hello Mobile - Media	3,150.00
Total Hello Mobile	3,150.00
62200 · Media	
62210 · Advertising - Print Media	721.00

62240 · Advertising - Online	709.09
Total 62200 · Media	1,430.09
Total 62000 · Promotion and Marketing	4,580.09
62500 · Travel, Motor & Amenities	
62510 · Accommodation	27,771.99
62520 · Air Fares	49,898.85
62530 · Entertainment	155,261.27
62565 · Motor Running Costs	6,725.77
62580 · Train and Taxi	1,978.91
Total 62500 · Travel, Motor & Amenities	241,636.79
68000 · Personnel	
68100 · Salary Renumeration	
68110 · Salaries & Wages	3,674,034.22
68140 · Salary Sacrifice Exempt Benefit	36,364.89
Total 68100 · Salary Renumeration	3,710,399.11
68300 · Leave Entitlement Provision	404,531.95
68400 · Payroll Tax	180,506.62
68500 · Superannuation	338,089.56
68600 · Fringe Benefit Tax	10,200.00
68910 · Staff Recruitment	69,684.95
68940 · Staff Training	6,670.30
68950 · Personnel - Others	87,596.00
Total 68000 · Personnel	4,807,678.49
69000 · Depreciation & amortisation	
69040 · Depn - Office Equipment	35,273.18
69050 · Depn - Office Furniture	14,794.01
69060 · Depn - Office Improvements	135,245.01
69070 · Depn - Office Software	13.12
69130 · Depn - Network Server Unit	6,275.75
69150 · Depn - Leased Office	344,236.36
Total 69000 · Depreciation & amortisation	535,837.43
86000 · Exchange Gain/Loss	0.00
Total Expense	7,152,861.37
Net Ordinary Income	-5,871,077.78
Other Income/Expense	
Other Income	
80200 · Interest Income	26,998.47
80210 · Sundry Income	
Dividend Income	26,160,000.00
Local Number Service Income	13,997.62
80210 · Sundry Income - Other	3,094.62
Total 80210 · Sundry Income	26,177,092.24
Total Other Income	26,204,090.71
Other Expense	
85100 · Interest Expense	25,583.98
85200 · Other Expenses	3,364.20
86001 · Foreign Exchange Difference	-6,777.77
95000 · Income Tax Expense	-200,356.00

Total Other Expense

-178,185.59

Net Other Income

26,382,276.30

Net Income

20,511,198.52

Add:

Depreciation

535,837.43

Interest Expenses

25,583.98

Income Tax

-200,356.00

Less:

Interest Income

-26,998.47

EBITDA

20,845,265.46

For personal use only

Annexure C – CovaU P&L Statement

For personal use only

CovaU
 Profit & Loss
 July 2022 through June 2023

5:04 PM
 11/12/23
 Accrual Basis
TOTAL

Ordinary Income/Expense
 Income

40000 · Electricity Revenue	
41500 · Electricity Invoiced	90,803,808.63
41600 · Electricity PPDIscount	55,464.25
41650 · Electricity Other Credit	-905,063.39
41900 · Electricity Others	35,781.00
41950 · Electricity Revenue - Other	152,875.70
Total 40000 · Electricity Revenue	90,142,866.19

45000 · Gas Revenue	
46500 · Gas Invoiced	43,826,080.90
46750 · Gas Revenue - Other	1,601,921.75
Total 45000 · Gas Revenue	45,428,002.65

Total Income 135,570,868.84

Cost of Goods Sold

50000 · COGS Electricity	
51100 · Retail Electricity Purchase	37,287,767.83
51200 · Elect.Distribution Cost	24,774,137.89
51400 · Environmental Product Cost	6,776,128.20
51500 · Electricity hedging cost	-5,047,376.75
51550 · Electricity Reallocation Cost	158,395.20
51600 · Electricity Meter Read	1,175,908.38
51700 · Other Electricity Cost	409.09
Total 50000 · COGS Electricity	65,125,369.84

55000 · COGS Gas	
56100 · Retail Gas Purchase	23,860,814.39
56200 · Gas Distribution Cost	7,515,186.25
56400 · Environmental Products Cost	163,334.86
56500 · Other Gas Cost	15,202.95
56600 · Gas Meter Read	132,582.33
56700 · Gas Hedging Cost	-4,026,127.84
Total 55000 · COGS Gas	27,660,992.94

Total COGS 92,786,362.78

Gross Profit 42,784,506.06

Expense

*Exchange Gain/Loss	0.00
60100 · Bad Debts	
60110 · Bad Debt Provision	507,848.29
60120 · Bad Debt written off	3,888,590.10
Total 60100 · Bad Debts	4,396,438.39
60200 · Call Centre	
60220 · Call Matrix	1,598,204.72
Total 60200 · Call Centre	1,598,204.72

For personal use only

	TOTAL
60300 · Finance Charges	
60310 · Bank Charges	376,740.13
60320 · Merchant Fees	176,931.86
60330 · Australia Post Fees	33,410.06
60340 · Credit check charges	53,024.07
Total 60300 · Finance Charges	640,106.12
60500 · Insurance	
60530 · Ins Worker Compensation	44,789.08
Total 60500 · Insurance	44,789.08
60600 · Miscellaneous	
60610 · Subscriptions	248,506.68
60620 · Registration & licence fee	186,823.14
60630 · Miscellaneous - Others	110,225.21
60640 · Centrelink Admin Fee	1,481.40
60650 · EWON	239,996.68
60660 · EWOV	30,977.89
60665 · EWOQ	71,617.23
60670 · EWOS	10,525.00
Total 60600 · Miscellaneous	900,153.23
60700 · Office Administration	
60710 · Amenities	4,030.85
60720 · Mobile Phone	218.22
60740 · Office Internet	740.42
60760 · Office Supplies	1,160.79
60770 · Postage and Delivery	189,320.94
60780 · Printing and Stationery	93,512.95
Total 60700 · Office Administration	288,984.17
60900 · Premises	
60940 · Office Rent	51,909.48
Total 60900 · Premises	51,909.48
61000 · Professional Services	
61040 · Consultancy Fees	642,068.69
61045 · Debts Collection Services Fee	795,341.34
Total 61000 · Professional Services	1,437,410.03
61050 · Operation & Network Cost (E&G)	1,467,351.98
61500 · Customer acquisition Cost	
61510 · Commission Expenses Electricity	1,024,192.61
Total 61500 · Customer acquisition Cost	1,024,192.61
61600 · Customer Retention Cost	161,320.00
62000 · Promotion and Marketing	
62020 · Events	96,012.67
62040 · Marketing subscription	10,065.00
62050 · Marketing - General	220,532.96
62060 · Referral Rewards Program	61,254.27
62100 · Marketing Materials	
62110 · Flyers & Stationary	5,681.50

	TOTAL
62120 · Sales Lead	52,179.72
Total 62100 · Marketing Materials	57,861.22
62200 · Media	
62210 · Advertising - Newspapers	12,894.26
62220 · TV, Cinema & Visual Display	2,560.00
62240 · Advertising - Online	72,415.88
Total 62200 · Media	87,870.14
Total 62000 · Promotion and Marketing	533,596.26
62500 · Travel, Motor & Amenities	
62510 · Accommodation	16,118.86
62520 · Air Fares	31,941.41
62530 · Entertainment	129,553.16
62540 · Meals	11.97
62550 · Parking	105.26
62560 · Petrol	46.53
62565 · Motor Running Cost	5,905.63
62570 · Car Hire	1,123.58
62580 · Train and Taxi	8,150.35
Total 62500 · Travel, Motor & Amenities	192,956.75
68000 · Personnel	
68100 · Salary Remuneration	
68110 · Salaries & Wages	2,824,683.59
68140 · Salary Sacrifice Exempt Benefit	16,742.84
Total 68100 · Salary Remuneration	2,841,426.43
68300 · Leave Provisions	
68310 · Annual Leave Provision	10,926.36
68320 · Long Service Leave Provision	23,705.83
Total 68300 · Leave Provisions	34,632.19
68400 · Payroll Tax	163,970.29
68500 · Superannuation	307,339.29
68900 · Other Staff Costs	
68910 · Staff Recruitment	1,198.70
68940 · Staff Training	4,680.91
Total 68900 · Other Staff Costs	5,879.61
Total 68000 · Personnel	3,353,247.81
86000 · Exchange Gain/Loss	16,502.23
Total Expense	16,107,162.86
Net Ordinary Income	26,677,343.20
Other Income/Expense	
Other Income	
80200 · Interest Income	294,801.00
80900 · Other Incomes	
80901 · Other Income - Other	4,709.84
80905 · FV movement on derivatives	22,085.24

	TOTAL	
80906 · Gain on sales of derivatives	3,286,288.44	
Total 80900 · Other Incomes	3,313,083.52	
Total Other Income	3,607,884.52	
Other Expense		
69000 · Depreciation & amortisation		
69030 · Depn - Plant & Equipment	17,985.00	
69040 · Depn - Office Equipment	12,728.03	
69050 · Depn - Office Furniture	164.76	
Total 69000 · Depreciation & amortisation	30,877.79	
85100 · Interest Expense	40,805.31	
95000 · Income Tax	7,509,742.70	
Total Other Expense	7,581,425.80	
Net Other Income	-3,973,541.28	
Net Income	22,703,801.92	
Add:		
Depreciation	30,877.79	
Interest Expenses	40,805.31	
Income Tax	7,509,742.70	
Less:		
Interest Income	-294,801.00	
EBITDA	29,990,426.72	

Annexure D – iGeno P&L Statement

For personal use only

Ordinary Income/Expense	
Income	
40000 · Electricity Revenue	
41500 · Electricity Invoiced	237,777.97
41600 · Electricity PPDIscount	-66,141.43
41650 · Electricity Other Credit	10.00
41900 · Electricity Others	23.88
Total 40000 · Electricity Revenue	<u>171,670.42</u>
Total Income	171,670.42
Cost of Goods Sold	
50000 · COGS Electricity	
51100 · Retail Electricity Purchase	260,026.72
Total 50000 · COGS Electricity	<u>260,026.72</u>
Total COGS	<u>260,026.72</u>
Gross Profit	-88,356.30
Expense	
60300 · Finance Charges	
60310 · Bank Charges	240.00
60320 · Merchant Fees	1,407.69
Total 60300 · Finance Charges	<u>1,647.69</u>
60500 · Insurance	
60530 · Ins Worker Compensation	-265.49
Total 60500 · Insurance	<u>-265.49</u>
60600 · Miscellaneous	
60230 · EWON	9,700.00
60660 · Lodgement Fee	290.00
Total 60600 · Miscellaneous	<u>9,990.00</u>
60700 · Office Administration	
60770 · Postage and Delivery	10.09
Total 60700 · Office Administration	<u>10.09</u>
61000 · Professional Services	
61040 · Consultancy Fees	71,000.00
Total 61000 · Professional Services	<u>71,000.00</u>
61050 · Operation & Network Cost (E&G)	15,333.45
62000 · Promotion and Marketing	
62100 · Marketing Materials	
62110 · Flyers & Stationary	300.00
Total 62100 · Marketing Materials	<u>300.00</u>
Total 62000 · Promotion and Marketing	300.00
62500 · Travel, Motor & Amenities	
62510 · Accommodation	9,249.77
62520 · Air Fares	705.69
62530 · Entertainment	4,058.44
	<u>14,013.90</u>

For personal use only

Total 62500 · Travel, Motor & Amenities 14,013.90

Total Expense 112,029.64

Net Ordinary Income -200,385.94

Other Income/Expense

Other Expense

69000 · Depreciation & amortisation

69030 · Depn - Plant & Equipment 5,726.40

Total 69000 · Depreciation & amortisation 5,726.40

95000 · Income Tax -1,717.00

Total Other Expense 4,009.40

Net Other Income -4,009.40

Net Income **-204,395.34**

Add: Depreciation 5,726.40

Interest Expenses

Income Tax -1,717.00

Less: Interest Income

EBITDA **-200,385.94**

For personal use only

Annexure E – Kinect P&L Statement

For personal use only

Kinect Inc.

Profit and Loss

A\$

	Total
Income	
Revenue - COVAU	1,599,976.37
Revenue - TPC Consolidated Limited	84,586.00
Total Income	\$ 1,684,562.37
Gross Profit	\$ 1,684,562.37
Other Income(Loss)	
Interest income	\$ 123.14
64400 Other operating income (expenses)	\$ 169.83
Total Other Income(Loss)	\$ 292.97
Expenses	
Advertising and Promotions	\$ 131.50
Communication, light & water	\$ -
Communication expense	\$ 15,000.71
Electricity	\$ 35,427.27
Internet services	\$ 49,419.42
Water	\$ 157.12
Total Communication, light & water	\$ 100,004.52
Company Events	\$ 8,888.06
60510 Contractors Fee	\$ 90,849.21
Depreciation expense	\$ 196,256.71
Dues and subscriptions	\$ 35,005.06
Freight Charges	\$ 71.89
Gas & Oil	\$ 11.50
Hotel Accomodation	\$ 553.03
Insurance	\$ 34,056.06
Legal and professional fees	\$ 89,133.75
Meal Allowance	\$ 14,428.30
Medicine	\$ 1,674.17
Miscellaneous	\$ 10,263.01
Non-Life Insurance	\$ 1,261.16
Office Supplies	\$ 4,307.25
Printing and Photocopy	\$ 29.33
Recruitment Services	\$ 72,823.91
Rental	-\$ 1,636.73
Repair & Maintenance (Materials/Supplies)	\$ 4,740.44
Repair & Maintenance - Labor & Materials	\$ 6,361.43
Representation and Entertainment	\$ 1,834.32
Rewards	\$ 8,545.36
Salaries and Allowances	\$ -
13th Month Pay	\$ 49,514.20
13th Month Pay - Indirect	\$ 2,028.07
13th Month Pay - Mgt	\$ 2,187.31
Basic pay	\$ 618,612.83

For personal use only

For personal use only

Basic pay - Indirect	\$	22,427.02
Basic pay - Management	\$	30,053.05
De Minimis Benefit - Indirect	\$	2,682.12
Deminimis benefits	\$	58,320.50
Deminimis benefits - Management	\$	5,150.00
62650 Holiday pay	\$	19,990.20
62700 Incentive and Benefit	\$	73,985.87
62750 Night Differential	\$	1,961.17
62800 Overtime pay	\$	14,797.46
Total Salaries and Allowances	\$	901,709.79
Security Services	\$	23,202.60
SSS, Philhealth, HDMF & other contributions	\$	72,861.45
Taxes and licenses	\$	1,042.05
63050 Tax Expense	\$	449.73
Training and Seminars	\$	163.64
Transportation and Travel	\$	3,219.91
64000 Transportation and Travel (BPI Credit Card)	\$	3,197.28
Interest Expenses	\$	2,201.19
Total Expenses	\$	1,687,640.85
Other Expenses		
Unrealised Gain or Loss	\$	-
Bank charges	\$	269.42
63500 Penalties	\$	62.94
Postage and Stamps	\$	3.17
Total Other Expenses	\$	335.54
Net Earnings	-\$	3,121.05
Add:		
Depreciation	\$	196,256.71
Interest Expenses	\$	2,201.19
Income Tax		
Less:		
Interest Income	-\$	123.14
EBITDA	\$	195,213.70

Annexure F - Worked example demonstrating calculation of pro rata adjustment in in clause 2.2 of Schedule 5

	Capstone 1 \$m	Capstone 2 \$m	Capstone 3 \$m																	
EBITDA (as adjusted pursuant to clause 2.3 of this Schedule 5, if applicable) of the Target Group in the relevant Calculation Period (\$m) (EBITDA Capstone)	\$18	\$24	\$30																	
Pre-adjustment Earn Out Scheme Consideration (\$m)	\$16	\$16	\$18																	
 <i>Earn Out Scheme Consideration = A + (B × $\frac{C - D}{E - D}$)</i> 																				
where:																				
A means the sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved in the table in clause 2.1(b) of this Schedule 5;																				
B means the Earn Out Scheme Consideration that applies to the next EBITDA Capstone which has not been satisfied in the table in clause 2.1(b) of this Schedule 5;																				
C means the EBITDA of the Target Group in the relevant Calculation Period;																				
D means the highest EBITDA Capstone which has been satisfied; and																				
E means the next EBITDA Capstone which has not been satisfied.																				
Example 1	\$m																			
In the situation where the target groups adjusted EBITDA (C) is \$26m, the sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved (A) would be \$32m, the Earn Out Scheme Consideration that applies to the next EBITDA Capstone (B) would be \$18m, the highest EBITDA Capstone which has been satisfied (D) would be \$24m and the next EBITDA Capstone which has not been satisfied (E) would be \$30m.																				
Maximum TPC Adjusted EBITDA achieved in 3 years over 12 month period	\$26			Comment																
A	\$32			Sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved (\$16m + \$16m)																
B	\$18			Earn Out Scheme Consideration that applies to the next EBITDA Capstone																
C	\$26			EBITDA of the Target Group in the relevant Calculation Period																
D	\$24			Highest EBITDA Capstone which has been satisfied																
E	\$30			Next EBITDA Capstone which has not been satisfied																
Total Earn Out Scheme Consideration	\$38																			
Example 2	\$m																			
In the situation where the target groups adjusted EBITDA (C) is \$21m, the sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved (A) would be \$16m, the Earn Out Scheme Consideration that applies to the next EBITDA Capstone (B) would be \$16m, the highest EBITDA Capstone which has been satisfied (D) would be \$18m and the next EBITDA Capstone which has not been satisfied (E) would be \$24m.																				
Maximum TPC Adjusted EBITDA achieved in 3 years over 12 month period	\$21			Comment																
A	\$16			Sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved (\$16m)																
B	\$16			Earn Out Scheme Consideration that applies to the next EBITDA Capstone																
C	\$21			EBITDA of the Target Group in the relevant Calculation Period																
D	\$18			Highest EBITDA Capstone which has been satisfied																
E	\$24			Next EBITDA Capstone which has not been satisfied																
Total Earn Out Scheme Consideration	\$24																			

Annexure G – Power Purchase Adjustment principles

Definitions

In this Annexure G to Schedule 5, (i) all terms appearing in italics like *this* and not otherwise defined or bolded will have the meaning given to that term in the National Electricity Rules; (ii) any capitalised terms which do not appear in italics like *this* and which are not defined below have the meaning given in clause 1.1 of this Agreement or clause 1 of Schedule 5 to this Agreement; and (iii) any other capitalised terms will have the meaning given below.

Actual EBITDA has the meaning given in paragraph (a) of this Annexure G to Schedule 5.

LGC means a certificate created under Subdivision A of Division 4 of Part 2 of the *Renewable Energy (Electricity) Act 2000* (Cth).

Monthly Green Notional Price means, with respect to a calendar month, the forward price on a dollar per MWh basis for LGCs (or, if the *Renewable Energy (Electricity) Act 2000* (Cth) is repealed, any other green products nominated by Target from time to time), as determined by averaging the forward prices quoted by two brokers (one appointed by Target, the other appointed by the Bidder) at least one month prior to:

- (a) the Implementation Date, for each calendar month during a Calculation Period to the extent that calendar month falls in the first 12 months after the Reference Date;
- (b) the commencement of month 13 after the Reference Date, for each calendar month during a Calculation Period to the extent it falls subsequent to, but in that same calendar year as, the commencement of month 13; and
- (c) the commencement of each calendar year, for each calendar month during a Calculation Period to the extent it falls in any subsequent calendar year.

By way of example:

- if the Implementation Date is 20 June 2024 and the Reference Date is 1 July 2024, the Monthly Green Notional Price will be determined at least one month prior to 20 June 2024 based on the calendar year 2024 forward price for LGCs from two brokers for the period 1 July 2024 to 30 June 2025. If both brokers nominate \$45, the Monthly Green Notional Price for each calendar month in the first 12 months (1 July 2024 – 30 June 2025) will be fixed at \$45;
- after that, the Monthly Green Notional Price for remaining period in calendar year 2025 will be determined based on the calendar year 2025 forward price for LGCs determined by two brokers at least one month prior to 1 July 2025. If one broker nominates \$30 and one broker nominates \$40, the Monthly Green Notional Price for each remaining calendar month in calendar year 2025 (1 July 2025 – 31 Dec 2025) will be fixed at \$35;
- after that, the Monthly Green Notional Price for a calendar year will be determined at least one month prior to the start of each calendar year based on the calendar year forward price for LGCs from two brokers as at that date.

The Monthly Green Notional Price may be different for different calendar months in any Calculation Period in accordance with the calculation described above.

Monthly Notional Electricity Price means, for each calendar month, the Notional Bundled Price that applies in respect of that calendar month minus the Monthly Green Notional Price for that calendar month on a dollar per MWh basis.

Notional Adjusted EBITDA means the EBITDA calculated in accordance with paragraph (b) of this Annexure G to Schedule 5.

Notional Bundled Price is \$90/MWh for electricity and LGCs, escalated on each anniversary of the Reference Date by the consumer price index most recently assumed for that calendar year by the AER in a regulatory price determination.

Reference Date means the date on which the first Calculation Period commences.

Relevant Jurisdiction means each of the *regions* of NSW, VIC, QLD, SA and TAS.

Relevant Volume means each and all loads (in MWh) at connection points for which CovaU is the financially responsible market participant in each Relevant Jurisdiction.

Total Actual Electricity Cost means, with respect to a Calculation Period, CovaU's total actual electricity cost on a dollar basis (taking into account any payment or receipt under any power purchase agreement or derivative which has the effect of fixing or capping the price of electricity) with respect to its Relevant Volume during the Calculation Period. For the purposes of this definition, any upfront costs payable for the acquisition of any power purchase agreement or derivative will be pro-rated over the tenor of such agreement.

Total Notional Electricity Cost means, with respect to a Calculation Period, the Weighted Average Notional Electricity Price for that Calculation Period multiplied by the Relevant Volume for that Calculation Period.

Weighted Average Actual Electricity Price means, with respect to a Calculation Period, CovaU's average actual electricity cost on a dollar per MWh basis, determined on a weighted basis to reflect its Relevant Volume in each calendar month in that Calculation Period.

Weighted Average Notional Electricity Price means, with respect to a Calculation Period, the average of the Monthly Notional Electricity Price for each calendar month that falls in that Calculation Period on a dollar per MWh basis, determined on a weighted basis to reflect CovaU's Relevant Volume in each calendar month in that Calculation Period.

Principles

- (a) For the Calculation Period, the parties will work from the latest available Accounts prepared in accordance with clause 2.5 of Schedule 5 to determine the actual recorded EBITDA for the Target Group (**Actual EBITDA**).
- (b) If, for a Calculation Period, the Weighted Average Actual Electricity Price exceeds the Weighted Average Notional Electricity Price for that Calculation Period, the Total Actual Electricity Cost used to determine the Actual EBITDA for that Calculation Period will be replaced with the Total Notional Electricity Cost for that Calculation Period to calculate a notional adjusted EBITDA for that Calculation Period (**Notional Adjusted EBITDA**). Otherwise, for the purpose of principle (c), the Actual EBITDA will be used for that Calculation Period.
- (c) For the purposes of determining whether an EBITDA Capstone is satisfied in a Calculation Period, the parties will use the higher of the Notional Adjusted EBITDA, where applicable, and the Actual EBITDA as the EBITDA for that period.
- (d) The parties agree that the calculation of the Notional Adjusted EBITDA is only for the purpose of determining whether any Earn Out Scheme Consideration is payable to Target shareholders.

Annexure H – Power Purchase Adjustment worked examples

Example 1

1. Example for Notional Adjusted EBITDA Calculation		Sep-24 to Aug-25 Actual EBITDA		Sep-24 to Aug-25 Notional Adjusted EBITDA	
	\$	\$		\$	
Revenue		214,252,467		214,252,467	
Electricity Purchase Cost	(26,049,132)				
Electricity Hedging Cost	(11,000,051)				
Total Actual Electricity Cost		(37,049,183)	(I)	(17,340,302)	(J)
Electricity Distribution Cost	(31,342,985)			(31,342,985)	
Electricity Environmental Product Cost	(11,659,188)			(11,659,188)	
Electricity Reallocation Cost	-			-	
Electricity Meter Read	(1,931,665)			(1,931,665)	
Other Electricity Cost	-			-	
Gas Purchase Cost	(65,732,015)			(65,732,015)	
Gas Hedging Cost	4,500,000			4,500,000	
Gas Distribution Cost	(19,332,546)			(19,332,546)	
Gas Environmental Product Cost	(2,045,741)			(2,045,741)	
Gas Meter Read	(807,376)			(807,376)	
Other Gas Cost	(91,367)			(91,367)	
Other COGS	-			-	
Total COGS		(165,432,066)		(145,783,184)	
Gross profit		48,760,401		68,469,283	
Gain on sale of derivatives	-			-	
Gross profit and gain on sale of derivatives		48,760,401		68,469,283	
Other income	13,200			13,200	
Operating expenses	(48,773,601)			(48,773,601)	
Employee benefits expense	(18,195,227)			(18,195,227)	
Gain on fair value of derivatives	(10,965,206)			(10,965,206)	
Other income	-			-	
Earnings before interest, taxation, depreciation, amortisation and impairment (EBITDA)		19,613,168	(K)	39,322,050	(L)

Other COGS* include all gas related wholesales cost, distribution cost, environmental cost, meter read cost etc.

Items	Calculation	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Total
(A)	Relevant Volume (MWh)	26,290	27,216	29,336	29,668	28,955	30,312	31,618	32,614	32,853	31,648	33,240	32,920	366,668
	Electricity Purchased Cost	\$ 2,187,306	\$ 2,275,983	\$ 2,233,886	\$ 2,250,442	\$ 2,165,982	\$ 1,590,845	\$ 1,664,563	\$ 1,717,189	\$ 2,512,856	\$ 2,388,867	\$ 2,523,395	\$ 2,537,817	\$ 26,049,132
	Electricity Hedging Cost	\$ 788,685	\$ 816,489	\$ 880,073	\$ 890,033	\$ 868,649	\$ 909,364	\$ 948,534	\$ 978,414	\$ 985,595	\$ 949,435	\$ 997,191	\$ 987,590	\$ 11,000,051
(B)	Total Actual Electricity Cost	\$ 2,975,991	\$ 3,092,472	\$ 3,113,960	\$ 3,140,475	\$ 3,034,631	\$ 2,500,208	\$ 2,613,097	\$ 2,695,603	\$ 3,498,451	\$ 3,338,302	\$ 3,520,586	\$ 3,525,407	\$ 37,049,183
(C)	(B)/(A) Weighted Average Actual Electricity Price (\$/MWh)	\$ 113.20	\$ 113.63	\$ 106.15	\$ 105.85	\$ 104.81	\$ 82.48	\$ 82.65	\$ 82.65	\$ 106.49	\$ 105.48	\$ 105.92	\$ 107.09	\$ 101.04
(D)	Notional Bundled Price	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 92.70	\$ 92.70	
(E)	Monthly Green Notional Price	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 35.00	
(F)	(D) - (E) Monthly Notional Electricity Price	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 57.70	\$ 57.70	
(G)	(A) x (F) Total Notional Electricity Cost	\$ 1,183,028	\$ 1,224,733	\$ 1,320,110	\$ 1,335,049	\$ 1,302,973	\$ 1,364,046	\$ 1,422,801	\$ 1,467,621	\$ 1,478,393	\$ 1,424,152	\$ 1,917,931	\$ 1,899,464	\$ 17,340,301
(H)	(G) / (A) Weighted Average Notional Electricity Price (\$/MWh)													\$ 47.29 #

Assumption:

- (1) Assume Cal 24 LGC Price is \$45.00
- (2) Assume Cal 25 LGC Price is \$35.00
- (3) Assume CPI Increase 3% p.a. and scheme implementation date is 20 June 2024 and the Reference Date is 1 Jul 2024

LGC prices as of 1 June 2024

Capitalised terms are defined in Annexure G*

Label	Cell Reference	Description
(A)	P36	Relevant Volume (MWh)
(B) & (I)	P40, E9	Total Actual Electricity Cost
(C)	P42	Weighted Average Actual Electricity Price (\$/MWh)
(D)	D44:O44	Notional Bundled Price
(E)	D45:O45	Monthly Green Notional Price
(F)	D46:O46	Monthly Notional Electricity Price
(G) & (J)	P48, H9	Total Notional Electricity Cost
(H)	P50	Weighted Average Notional Electricity Price (\$/MWh)
(K)	E31	Actual EBITDA
(L) *	H31	Notional Adjusted EBITDA

* The Weighted Average Actual Electricity Price has exceeded the Weighted Average Notional Electricity Price for Calculation Period.

Example 2

2. Example for Notional Adjusted EBITDA Calculation

		Sep-24 to Aug-25 Actual EBITDA	
Revenue	\$	\$	
Electricity Purchase Cost	(28,268,201)	191,463,593	
Electricity Hedging Cost	15,974,739		
Total Actual Electricity Cost		(12,293,462)	(I)
Elect. Distribution Cost	(27,342,985)		
Environmental Product Cost	(10,984,188)		
Electricity Reallocation Cost	-		
Electricity Meter Read	(1,931,685)		
Other Electricity Cost	-		
Gas Purchase Cost	(65,732,015)		
Gas Hedging Cost	4,500,000		
Gas Distribution Cost	(19,332,546)		
Gas Environmental Product Cost	(2,045,741)		
Gas Meter Read	(807,376)		
Other Gas Cost	(91,367)		
Other COGS	-		
Total COGS	(136,061,344)		
Gross profit		55,402,249	
Gain on sale of derivatives	-		
Gross profit and gain on sale of derivatives		55,402,249	
Other income	13,200		
		55,415,449	
Operating expenses	(18,436,111)		
Employee benefits expense	(11,111,078)		
Gain on fair value of derivatives	-		
Earnings before interest, taxation, depreciation, amortisation and impairment (EBITDA)		25,868,260	(K)

Items	Calculation	Cost Calculation:	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Total
(A)		Relevant Volume (MWh)	20,535	20,767	20,268	21,218	22,132	22,830	22,997	22,153	23,268	23,044	23,908	24,304	267,426
		Electricity Purchased Cost	\$ 2,293,352	\$ 2,312,879	\$ 2,234,928	\$ 1,841,339	\$ 1,924,479	\$ 1,985,243	\$ 2,576,520	\$ 2,458,574	\$ 2,592,821	\$ 2,596,372	\$ 2,706,807	\$ 2,744,888	\$ 28,268,201
		Electricity Hedging Cost	-\$ 1,232,740	-\$ 1,246,372	-\$ 1,215,318	-\$ 1,247,601	-\$ 1,301,531	-\$ 1,342,537	-\$ 1,380,952	-\$ 1,329,126	-\$ 1,396,506	-\$ 1,384,472	-\$ 1,437,065	-\$ 1,460,520	-\$ 15,974,739
(B)		Total Actual Electricity Cost	\$ 1,060,612	\$ 1,066,507	\$ 1,019,610	\$ 593,738	\$ 622,949	\$ 642,705	\$ 1,195,568	\$ 1,129,447	\$ 1,196,316	\$ 1,211,900	\$ 1,269,743	\$ 1,284,367	\$ 12,293,462
(C)	(B)/(A)	Weighted Average Actual Electricity Price (\$/MWh)	51.65	51.35	50.31	27.98	28.15	28.15	51.99	50.98	51.42	52.59	53.11	52.85	\$ 45.97
(D)		Notional Bundled Price	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 90.00	\$ 92.70	\$ 92.70	
(E)		Monthly Green Notional Price	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 35.00	\$ 35.00	
(F)	(D) - (E)	Monthly Notional Electricity Price	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 57.70	\$ 57.70	
(G)	(A) x (F)	Total Notional Electricity Cost	\$ 924,077	\$ 934,534	\$ 912,081	\$ 954,832	\$ 995,961	\$ 1,027,335	\$ 1,034,875	\$ 996,906	\$ 1,047,051	\$ 1,036,969	\$ 1,379,515	\$ 1,402,352	\$ 12,646,488
(H)	(G) / (A)	Weighted Average Notional Electricity Price(\$/MWh)													\$ 47.29

Assumption:
 (1) Assume Cal 24 LGC Price is \$45.00
 (2) Assume Cal 25 LGC Price is \$35.00
 (3) Assume CPI Increase 3% p.a. and scheme implementation date is 20 June 2024 and the Reference Date is 1 Jul 2024
 LGC prices as of 1 June 2024

Label	Cell Reference	Description
(A)	P36	Relevant Volume (MWh)
(B) & (I)	P40, E9	Total Actual Electricity Cost
(C)	P42	Weighted Average Actual Electricity Price (\$/MWh)
(D)	D44-D44	Notional Bundled Price
(E)	D45-D45	Monthly Green Notional Price
(F)	D46-D46	Monthly Notional Electricity Price
(G)	P48, H9	Total Notional Electricity Cost
(H)	P50	Weighted Average Notional Electricity Price (\$/MWh)
(K)	E31	Actual EBITDA

** The Weighted Average Actual Electricity Price has not exceeded the Weighted Average Notional Electricity Price for Calculation Period.

For personal use only

Annexure I – Form of Draft Certificate

[insert date]

Wollar Solar Holding Pty Ltd
Suite 3, Level 21,
1 York Street
Sydney NSW 2000

Dear Sirs / Mesdames

Draft Certificate pursuant to Scheme Implementation Agreement in respect of TPC Consolidated Limited

We refer to the Scheme Implementation Agreement dated on or about [] between Wollar Solar Holding Pty Ltd (ACN 641 036 080) (*WSH*) and TPC Consolidated Limited (ACN 073 079 268) (*TPC*) (the *SIA*).

Capitalised terms used in this certificate have the meaning given to them in the SIA, unless the context otherwise requires.

This Draft Certificate is prepared in accordance with the relevant provisions pertaining to the calculation and payment of the Earn Out Scheme Consideration under the SIA.

1 Calculation Period

This Draft Certificate (and the calculations within it) pertains to the period commencing on [] and ending on [] (*Calculation Period*).

2 Calculation of EBITDA for the Calculation Period

Calculation Items (If applicable)	EBITDA Items	Quantity
(K)	Actual EBITDA	[]
(A)	Relevant Volume for Calculation Period	[]
(C)	Weighted Average Actual Electricity Price	\$/[]/MWh
(H)	Weighted Average Notional Electricity Price	\$/[]/MWh
(L)	EBITDA used for calculating Earn Out Scheme Consideration	[The Weighted Average Actual Electricity Price has not exceeded the Weighted Average Notional Electricity Price for the Calculation Period and as such, the EBITDA has not been adjusted for the Power

		<p>Purchase Adjustment and remains equal to the Actual EBITDA for the purposes of calculating the Earn Out scheme Consideration]</p> <p>[OR]</p> <p>\$[*] (the Notional Adjusted EBITDA for the Calculation Period)</p>
--	--	--

3 Calculation of Earn Out Scheme Consideration

EBITDA Capstone 1	\$[*]m
EBITDA Capstone 2	\$[*]m
EBITDA Capstone 3	\$[*]m
Pre-adjustment Earn Out Scheme Consideration	\$[*]m
Adjusted for pro rata adjustment	<p>Note: The pro rata adjustment (if applicable) only applies in respect of the final Calculation Period.</p> <p>\$[*]m</p> <p>Calculated by:</p> $A + \left(B \times \frac{C - D}{E - D} \right)$ <p>where:</p> <p>A = [*] which is the sum of the Earn Out Scheme Consideration for each EBITDA Capstone that has been achieved</p> <p>B = [*] which is the Earn Out Scheme Consideration that applies to the next EBITDA Capstone which has not been satisfied</p> <p>C = [*] which is the EBITDA of the Target Group in the relevant Calculation Period</p> <p>D = [*] which is the highest EBITDA Capstone which has been satisfied</p> <p>E = [*] which is the next EBITDA Capstone which has not been satisfied</p>
Independent Expert Costs	\$[*]
Earn Out Tax Adjustment	\$[*]
Total Earn Out Scheme Consideration for the Calculation Period	\$[*]m

Yours sincerely

TPC Consolidated Limited

Signed

Name

For personal use only

Annexure J – Form of Scheme Shareholder Nominee Deed Poll

Scheme Shareholder Nominee Deed Poll

This Deed Poll is made on

Parties

(A) *[insert name and address of Scheme Shareholder Nominee]* (the **Scheme Shareholder Nominee**).

The Scheme Shareholder Nominee agrees in favour of and for the benefit of each and all of the following:

- (B) the Scheme Shareholders;
- (C) the parties to the Scheme Implementation Agreement (**SIA**) dated [] between Wollar Solar Holding Pty Ltd (ACN 641 036 080) and TPC Consolidated Limited (ACN 073 079 268).

It is declared as follows.

1 Definitions and Interpretation

1.1 Defined terms

Words and expressions used in this Deed Poll have the same meaning as those used in the SIA, unless the context otherwise requires.

1.2 Interpretation

Clause 1.2 of the SIA applies in the interpretation of this Deed Poll, as if references in that clause to 'this Agreement' were references to 'this Deed Poll'.

2 Scheme Shareholder Nominee

- (a) Subject to the terms of this Deed Poll, the Scheme Shareholder Nominee agrees to his or her appointment as Scheme Shareholder Nominee by the Scheme Shareholders in accordance with the terms of the SIA and the Scheme on and from the date of this Deed Poll.
- (b) On and from the date of this Deed Poll, the Scheme Shareholder Nominee agrees to be bound by all such relevant terms of the SIA and the Scheme in the capacity of Scheme Shareholder Nominee.

3 Scheme Shareholder Nominee not subject to prior liabilities

Notwithstanding any other provision of this Deed Poll, but subject to the SIA and the Scheme, the Scheme Shareholder Nominee is not liable upon appointment for any losses or liabilities which accrued prior to the date of this Deed Poll or which relate to any act or omission prior to the date of this Deed Poll in relation to its capacity as Scheme Shareholder Nominee which it is being appointed as pursuant to this Deed Poll.

4 Limitation of liability

Without limiting clause 3 of this Deed Poll, the Scheme Shareholder Nominee will not:

For personal use only

- (a) have any liability whatsoever in his or her role as Scheme Shareholder Nominee under SIA, the Scheme or the Note Trust Deed in its role as Scheme Shareholder Nominee;
- (b) be under any liability for anything done in accordance with a direction given to it by the Scheme Shareholders;
- (c) be under any liability for any act, omission, neglect or default of Bidder or Target under or in connection with this Agreement, the Scheme or the Note Trust Deed; and
- (d) be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise of any authority, discretion or power of Bidder, Target or Note Trustee,

except to the extent the Scheme Shareholder Nominee has acted fraudulently.

5 Address of Scheme Shareholder Nominee

For the purposes of the SIA and the Scheme, the address of the Scheme Shareholder Nominee to which all Notices must be delivered is:

Address: []

Email: []

6 Governing Law and Jurisdiction

This Deed Poll is governed by the laws of New South Wales. The Scheme Shareholder Nominee submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

[insert signature block]

Schedule 6

Deed Poll

For personal use only

Deed Poll

This Deed Poll is made on

By

Wollar Solar Holding Pty Ltd (ACN 641 036 080) of Suite 3, Level 21, 1 York Street, Sydney NSW 2000 (**Bidder**).

Beijing Energy International (Australia) Holding Pty Limited (ACN 614 036 053) of Suite 3, Level 21, 1 York Street, Sydney NSW 2000 (**Note Guarantor**).

In favour of

Each Scheme Shareholder

The Note Trustee

Recitals

- A Bidder and TPC Consolidated Limited (ACN 073 079 268) of Suite 29.05, Level 29, 225 George Street, Sydney NSW 2000 (**Target**) have entered into a Scheme Implementation Agreement dated [] (the **Scheme Implementation Agreement**).
- B Target has agreed in the Scheme Implementation Agreement to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, Bidder will acquire all of the Scheme Shares from Scheme Shareholders for the payment by Bidder of the Scheme Consideration.
- C In accordance with the Scheme Implementation Agreement, Bidder is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders and Note Trustee (in respect of its obligations the Earn Out Scheme Consideration and the Nominee Cost Reserve) and the Scheme Shareholders (in respect of the provision of the Initial Scheme Consideration) that it will observe and perform the obligations contemplated of it under the Scheme.
- D Note Guarantor is entering into this Deed Poll for the purposes of covenanting in favour of the Scheme Shareholders and the Note Trustee to guarantee Bidder's obligations under the Scheme to pay the Earn Out Scheme Consideration.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

Terms defined in the Scheme Implementation Agreement have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the Scheme Implementation Agreement form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this Agreement' in that clause are references to 'this Deed Poll'.

2 Nature of Deed Poll

Each of Bidder and Note Guarantor acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholders are not party to it;
- (b) under the Scheme, other than in respect of the payment of the Earn Out Scheme Consideration, each Scheme Shareholder appoints Target as its agent and attorney to enforce this Deed Poll against Bidder on behalf of that Scheme Shareholder; and
- (c) under the Note Trust Deed, the Note Trustee is appointed to be the agent and attorney of each Scheme Shareholder to enforce the Note Trust Deed in respect of the payment of the Earn Out Scheme Consideration against Bidder and Note Guarantor on behalf of that Scheme Shareholder.

3 Conditions precedent and termination

3.1 Conditions precedent

The obligations of Bidder and Note Guarantor under this Deed Poll are subject to the Scheme becoming Effective.

3.2 Termination

If the Scheme Implementation Agreement is terminated before the Effective Date or the Scheme does not become Effective on or before the End Date, the obligations of Bidder and Note Guarantor under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless Target, Bidder and Note Guarantor otherwise agree in writing.

3.3 Consequences of termination

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

- (a) each Bidder and Note Guarantor is released from its obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each Scheme Shareholder and the Note Trustee retains any rights, powers or remedies that Scheme Shareholder and the Note Trustee has against Bidder and Note Guarantor in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4 Compliance with Scheme obligations

Subject to clause 3:

- (a) Bidder covenants in favour of each Scheme Shareholder that it will observe and perform all obligations attributed to it under the Scheme, including (without limitation) the relevant obligations relating to the provision of the Scheme Consideration, subject to and in accordance with the terms of the Scheme; and
- (b) Bidder covenants in favour of each Scheme Shareholder and the Note Trustee that it will observe and perform its obligation in respect of the payment of the Earn Out Scheme Consideration contemplated by Bidder under the Scheme in accordance with the terms of the Scheme;
- (c) Note Guarantor guarantees that Bidder will provide the Earn Out Scheme Consideration in accordance with the Scheme; and

- (d) if a Replacement Note Guarantor is agreed by Target in accordance with the terms of the Scheme Implementation Agreement, Note Guarantor must procure that the Replacement Note Guarantor executes and delivers a deed poll in favour of Note Trustee and each Scheme Shareholder on the same terms as this Deed Poll.

5 Representations and warranties

Each of Bidder and Note Guarantor makes the following representations and warranties in respect of itself.

- (a) **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- (b) **(Power)** It has the power to enter into and perform its obligations under this Deed Poll, and to carry out the transactions contemplated by this Deed Poll.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Deed Poll by it and to carry out the transactions contemplated by this Deed Poll.
- (d) **(Document binding)** Its obligations under this Deed Poll are valid and binding and are enforceable against it in accordance with the terms of this Deed Poll.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
- (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution or other constituent documents.

6 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) each of Bidder and Note Guarantor having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

7 Further assurances

Each of Bidder and Note Guarantor will, on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Shareholder, do all things and execute all Agreements, instruments, transfers or other documents as may be necessary to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

8 General

8.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Deed Poll:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be sent by regular ordinary post (airmail if appropriate) to the addresses referred to below, or sent by email to the addresses referred to below:

Bidder:

Address: Suite 3, Level 21, 1 York Street, Sydney
NSW 2000

Email: [REDACTED]

Attention: Weiwei Shi

Note Guarantor

Address: Suite 3, Level 21, 1 York Street, Sydney
NSW 2000

Email: [REDACTED]

Attention: Weiwei Shi

- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, six Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (iv) on a day that is not a business day in the place to which the Notice is sent or later than 5:00pm (local time), then it will be taken to have been duly given or made at the start of business on the next business day in that place; or
- (v) before 9:00am (local time) on a business day in the place to which the Notice is sent, then it will be taken to have been duly given or made at 9:00am (local time) on that business day in that place.

8.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by Bidder, Note Guarantor, Note Trustee or by any Scheme Shareholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. 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. A waiver is not valid or binding on the person granting that waiver unless made in writing.

8.3 Remedies cumulative

The rights, powers and remedies of Bidder, Note Guarantor, Note Trustee and of each Scheme Shareholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

8.4 Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) either:
 - (i) before the Second Court Date, the amendment or variation is agreed to in writing by Target, Bidder and Note Guarantor (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder); or
 - (ii) on or after the Second Court Date, the amendment or variation is agreed to in writing by Target, Bidder and Note Guarantor (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder), and is approved by the Court; and
- (b) Bidder and Note Guarantor enter into a further Deed Poll in favour of the Scheme Shareholders and the Note Trustee giving effect to that amendment or variation.

8.5 Assignment

The rights and obligations of Bidder, Note Guarantor, Note Trustee and of each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of Bidder, Note Guarantor and Target.

8.6 Duty

- (a) Bidder must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll.
- (b) Bidder will:
 - (i) pay all duty (including stamp duty and any related fines, penalties and interest) payable on the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme; and
 - (ii) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.6(b)(i).

8.7 Governing law

This Deed Poll is governed by the laws of New South Wales.

Executed and delivered as a Deed

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Wollar Solar Holding Pty Ltd
ACN 641 036 080

Director

Director/Secretary

Print Name

Print Name

For personal use only

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Beijing Energy International (Australia)
Holding Pty Ltd ACN 641 036 053

Director

Director/Secretary

Print Name

Print Name

For personal use only

Schedule 7
Form of Scheme

For personal use only

Scheme of Arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)

Between

TPC Consolidated Limited (ACN 073 079 268) of Suite 29.05, Level 29, 225 George Street, Sydney NSW 2000 (**Target**).

And

Each holder of Target Shares recorded in the Target Share Register as at the Scheme Record Date (each a **Scheme Shareholder** and, together, the **Scheme Shareholders**).

Recitals

- A Target is an Australian public company limited by shares, registered under the Corporations Act in New South Wales, Australia, and has been admitted to the official list of the ASX. Target Shares are quoted for trading on the ASX.
- B Wollar Solar Holding Pty Ltd (ACN 641 036 080) of Suite 3, Level 21, 1 York Street, Sydney NSW 2000, is a company incorporated in New South Wales, Australia (**Bidder**).
- C Target and Bidder have entered into a Scheme Implementation Agreement dated [] (the **Scheme Implementation Agreement**) pursuant to which:
- (a) Target has agreed to propose this Scheme to Target Shareholders; and
 - (b) Target and Bidder have agreed to take certain steps to give effect to this Scheme.
- D If this Scheme becomes Effective, then:
- (a) all of the Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to Bidder;
 - (b) Bidder will pay or procure the payment of:
 - (i) the Initial Scheme Consideration to Target (on behalf of each Scheme Shareholder);
 - (ii) the Nominee Cost Reserve to the Note Trustee (on behalf of each Scheme Shareholder); and
 - (iii) the Earn Out Scheme Consideration to the Note Trustee (on behalf of each Scheme Shareholder),in accordance with the terms of this Scheme, the Deed Poll and the Note Trust Deed (as applicable); and
 - (c) Target will enter the name and address of Bidder in the Target Share Register as the holder of all of the Scheme Shares.
- E By executing the Scheme Implementation Agreement, Target has agreed to propose and implement this Scheme, and Bidder has agreed to assist with that proposal and implementation, on and subject to the terms of the Scheme Implementation Agreement.
- F Bidder and Note Guarantor have entered into the Deed Poll for the purpose of:
- (a) in the case of the Bidder, covenanting in favour of the Scheme Shareholders and Note Trustee (in respect of its obligations to pay the Earn Out Scheme Consideration and the Nominee Cost Reserve) and the Scheme Shareholders (in respect of the provision of the Initial Scheme Consideration) and that it will observe and perform the obligations contemplated of it under this Scheme;

For personal use only

- (b) in the case of Note Guarantor, covenanting in favour of the Scheme Shareholders and the Note Trustee to guarantee Bidder's obligations under the Scheme to pay the Earn Out Scheme Consideration.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

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

Business Day means a day that banks are open for business in Sydney, Australia, the People's Republic of China and Hong Kong.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

Constitution means the constitution of Target, as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

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

Deed Poll means the Deed Poll executed on [date] by Bidder and Note Guarantor in favour of the Scheme Shareholders and the Note Trustee.

Earn Out Scheme Consideration has the meaning given in the Scheme Implementation Agreement.

Effective means, when used in relation to this Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the Scheme Orders is lodged with ASIC.

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

End Date means:

- (a) 31 May 2024; or
- (b) if extended pursuant to clause 3.6 of the Scheme Implementation Agreement, 31 July 2024; or
- (c) such other date as may be agreed in writing between Target and Bidder.

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

Initial Scheme Consideration means \$8.77 per Scheme Share held by a Scheme Shareholder.

Nominee Cost Reserve has the meaning given in the Scheme Implementation Agreement.

Note means the contractual right of each Scheme Shareholder to receive the Earn Out Scheme Consideration, which is referred to as an unsecured note in accordance with this Scheme in order to comply with the Bidder's obligation under s283BH(1) of the Corporations Act. For the

avoidance of doubt, a Note does not create a debt in favour of any Scheme Shareholder, does not constitute a debenture under the common law definition of that term, and a debt does not otherwise exist under this Scheme with respect to any Note.

Note Guarantor means Beijing Energy International (Australia) Holding Pty Limited or, if a Replacement Note Guarantor is identified before the Note Trust Deed is executed, means that Replacement Note Guarantor.

Note Trust Deed means the Deed entered into between Target, Bidder, the Note Trustee and Note Guarantor pursuant to clause 4.2 of the Scheme Implementation Agreement.

Note Trustee means an entity who meets the requirements of section 283AC of the Corporations Act and who is approved by Target (acting reasonably) and appointed by the Bidder to be the trustee for the holders of the Notes under the Note Trust Deed.

Permitted Distribution has the meaning given to that term in the Scheme Implementation Agreement.

Registered Address means, in relation to a Scheme Shareholder, the address of that Scheme Shareholder shown in the Target Share Register as at the Scheme Record Date.

Regulatory Authority includes:

- (a) ASX, ASIC;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Replacement Note Guarantor has the meaning given to that term in the Scheme Implementation Agreement.

Respective Proportion means, in relation to the relevant Scheme Shareholder, the proportion determined by dividing the number of Scheme Shares held by the Scheme Shareholder as at the Scheme Record Date by the total number of Scheme Shares on issue as at the Scheme Record Date.

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court including under section 411(6) of the Corporations Act and agreed to by Target and Bidder in writing (which they may each give or withhold in their absolute discretion).

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to this Scheme, and includes any adjournment or postponement of that meeting.

Scheme Orders means the orders of the Court made under section 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

Scheme Record Date means 7:00pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between Target and Bidder.

Scheme Shareholder has the meaning given to that term in the Scheme Implementation Agreement.

Scheme Shareholder Nominee has the meaning given to that term in the Scheme Implementation Agreement.

Scheme Shares means the Target Shares on issue as at the Scheme Record Date.

Scheme Transfer means, in relation to each Scheme Shareholder, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act.

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

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

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

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

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

Trust Account means an Australian dollar denominated trust account held with an Australian bank operated by Target (or its nominee on behalf of Target) as trustee for the Scheme Shareholders.

Trust Account Earn Out means means an Australian dollar denominated trust account held with an Australian bank operated by the Note Trustee as trustee for the Scheme Shareholders (or a delegate or agent of the Note Trustee).

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause is a reference to a clause of this Scheme.
 - (vi) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
 - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
 - (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
 - (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (x) A reference to *dollars* or \$ is to Australian currency.

- (xi) Words and phrases not specifically defined in this Scheme have the same meanings (if any) given to them in the Corporations Act.
- (xii) A reference to time is to Sydney, Australia time.
- (xiii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.

2 Conditions

2.1 Conditions Precedent

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8:00am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Agreement (other than the condition precedent relating to the approval of the Court set out in clause 3.1 of the Scheme Implementation Agreement) has been satisfied or waived in accordance with the Scheme Implementation Agreement;
- (b) as at 8:00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll has been terminated in accordance with its terms;
- (c) the Court makes orders approving this Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Target and Bidder in writing (which agreement they may give or withhold in their absolute discretion);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and that are agreed to by Target and Bidder in writing (which agreement they may give or withhold in their absolute discretion) have been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date.

2.2 Lapsing

Unless Target and Bidder otherwise agree in writing prior to the Implementation Date, this Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date or any later date Target and Bidder agree in writing in accordance with the Scheme Implementation Agreement; and
- (b) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms before the Scheme becomes Effective.

3 Scheme becoming Effective

Subject to clause 2, this Scheme will take effect on and from the Effective Date.

4 Implementation of Scheme

- (a) If the conditions precedent in clause 2.1 are satisfied, Target must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Orders as soon as possible and in any event before 5:00pm on the Business Day

immediately following the day on which the Scheme Orders are entered, or such other date as agreed in writing by Target and Bidder.

- (b) On the Implementation Date, subject to Bidder having satisfied its obligations in clause 5.3 and Target undertaking the acts referred to clause 6, all of 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 Shareholder (other than acts performed by Target or any of its directors and officers as attorney and agent for Scheme Shareholders under this Scheme), by:
 - (i) Target delivering to Bidder for execution by Bidder duly completed (and, if necessary, stamped) Scheme Transfers to transfer all of the Scheme Shares to Bidder (and one or more Scheme Transfers can be a master transfer of all or part of all of the Scheme Shares), duly executed by Target (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder as transferor under clause 9.3;
 - (ii) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and
 - (iii) Target, immediately after receipt of the Scheme Transfers under clause 4(b)(ii), entering, or procuring the entry of, the name and address of Bidder in the Target Share Register as the holder of all of the Scheme Shares.
- (c) Prior to the transfer of the Scheme Shares under clause 4(b), Bidder must prepare and update its register of debenture holders to reflect the entitlement of each Scheme Shareholder to receive any Earn Out Scheme Consideration in accordance with the terms of this Scheme and the Note Trust Deed.

5 Initial Scheme Consideration

5.1 Entitlement to Initial Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to the Initial Scheme Consideration for each Scheme Share held by that Scheme Shareholder.

5.2 Nominee Cost Reserve

Each Scheme Shareholder directs a portion of the Initial Consideration equal to its Respective Proportion of the Nominee Cost Reserve to be paid by Bidder into the Trust Account Earn Out to be dealt with in accordance with the Note Trust Deed.

5.3 Deposit of Nominee Cost Reserve and Initial Scheme Consideration

Bidder must, by no later than 5:00pm on the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds:

- (a) pursuant to the direction in clause 5.2, an amount equal to the Nominee Cost Reserve to the Note Trustee (on behalf of each Scheme Shareholder); and
- (b) into the Trust Account an amount at least equal to the aggregate amount of the Initial Scheme Consideration payable to each Scheme Shareholder provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account.

5.4 Payment to Scheme Shareholders

- (a) On the Implementation Date, subject to Bidder having satisfied its obligations in clause 5.3, Target must pay or procure the payment, from the Trust Account, to each Scheme

Shareholder the Initial Scheme Consideration as that Scheme Shareholder is entitled under this clause 5.

- (b) The obligations of Target under clause 5.4(a) will be satisfied by Target (in its absolute discretion):
 - (i) where a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with Target's requirements to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 5.4(b)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.5).

5.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Target Share Register as at the Scheme Record Date or to the joint holders.

5.6 Fractional entitlements

Where the calculation of the Initial Scheme Consideration to be paid to a Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, that fractional entitlement must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of cents, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number of cents.

5.7 Unclaimed moneys

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Initial Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Target may cancel a cheque issued under this clause 5 if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (c) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under this clause 5.7.

5.8 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of Target's obligations under the other provisions of this clause 5 and provided Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Scheme Implementation Agreement, that surplus (less any bank fees and related charges) shall be paid by Target to Bidder.

5.9 Orders of a court or Regulatory Authority

- (a) If written notice is given to Target (or the Registry) of an order or direction made by or a requirement of a court of competent jurisdiction or other Regulatory Authority that:
 - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Target in accordance with this clause 5, then Target shall be entitled to procure that provision of that consideration is made in accordance with that order or direction or otherwise by law; or
 - (ii) prevents Target from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Target shall be entitled to (as applicable) retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Initial Scheme Consideration, until such time as payment in accordance with this clause 5 is permitted by that (or another) court or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 5.9(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

6 Dealings in Target Shares

6.1 Dealings in Target Shares by Scheme Shareholders

- (a) For the purpose of establishing the persons who are Scheme Shareholders, dealings in Target Shares will only be recognised by Target if:
 - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Scheme Record Date; and
 - (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by Target by 5:00pm on the day which is the Scheme Record Date at the place where the Target Share Register is located (in which case Target must register such transfers or transmission applications before 7:00pm on that day).
- (b) Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders nor for any other purpose (other than to transfer to Bidder pursuant to this Scheme and any subsequent transfers by Bidder and its successors in title), any transfer or transmission application in respect of Target Shares received after such times, or received prior to such times but not in actionable or registrable form (as appropriate).

6.2 Register

- (a) Target will, until the Initial Scheme Consideration has been provided and the name and address of Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Target Share Register in accordance with this clause 6, and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.
- (b) As from the Scheme Record Date (and other than for Bidder and its successors in title following the Implementation Date), each entry in the Target Share Register as at the Scheme Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.
- (c) As soon as possible on or after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder as shown in the Target Share Register are available to Bidder.

6.3 Effect of share certificates and holding statements

As from the Scheme Record Date (and other than for Bidder and its successors in title following the Implementation Date), all share certificates and holding statements for Scheme Shares (other than statements of holding in favour of Bidder) will cease to have effect as documents of title in respect of those Scheme Shares.

6.4 No disposals after Record Date

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after 5:00pm on the Scheme Record Date (other than to Bidder in accordance with this Scheme and any subsequent transfers by Bidder and its successors in title), and any attempt to do so will have no effect and Target shall be entitled to disregard any such disposal, purported disposal or agreement.

7 Quotation of Target Shares

- (a) Target must apply to ASX to suspend trading on the ASX in Target Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Bidder, Target must apply to ASX:
 - (i) for termination of the official quotation of Target Shares on the ASX; and
 - (ii) to have itself removed from the official list of the ASX.

8 Earn Out Scheme Consideration

- (a) If this Scheme becomes Effective, the Earn Out Scheme Consideration will be payable to Scheme Shareholders in accordance with, and the Scheme Shareholders (including with respect to any Scheme Shareholder Nominee) agree to be bound by, the terms of Schedule 5 to the Scheme Implementation Agreement as if incorporated into this Scheme.
- (b) Subject to Bidder's compliance with Schedule 5 of the Scheme Implementation Agreement and its performance of the actions attributed to it in Schedule 5 of the Scheme

Implementation Agreement, Target undertakes in favour of the Scheme Shareholders to perform the obligations imposed on it in Schedule 5 of the Scheme Implementation Agreement.

9 General provisions

9.1 Further assurances

- (a) Each Scheme Shareholder and Target will do all things and execute all agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.
- (b) Without limiting Target's other powers under this Scheme, Target has power to do all things that it considers necessary or desirable to give effect to this Scheme and the transactions contemplated by it.

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares (other than any right to receive a Permitted Distribution (if any)), to Bidder in accordance with the terms of this Scheme; and
- (b) agrees to, on the direction of Bidder, destroy any holding statement or share certificates relating to its Scheme Shares; and
- (c) who holds its Scheme Shares in a CHESS Holding (as defined in the Settlement Rules) agrees to the conversion of those Scheme 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; and
- (d) acknowledges and agrees that this Scheme binds Target and all Scheme Shareholders (including those that did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting) and, to the extent of any inconsistency, overrides the Constitution;
- (e) acknowledges and agrees that the Notes will be issued and governed by the terms of the Note Trust Deed;
- (f) acknowledges and agrees that the Nominee Reserve Costs will be held by the Note Trustee in the Trust Account Earn Out subject to the terms of the Note Trust Deed;
- (g) acknowledges and agrees that the liability of the Scheme Shareholder Nominee will be limited in accordance with the terms of the Scheme Implementation Agreement;
- (h) irrevocably consents to Target and Bidder doing all things and executing all agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it,

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

9.3 Appointment of Target as attorney for implementation of Scheme

Other than enforcing the Deed Poll or the Note Trust Deed against Bidder or Note Guarantor in respect of the Earn Out Scheme Consideration, each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints Target as that Scheme

Shareholder's agent and attorney for the purpose of:

- (a) doing all things and executing all Agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4(b)(i); and
- (b) enforcing the Deed Poll against Bidder or Note Guarantor (as applicable),

and Target accepts such appointment. Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 9.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

9.4 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised Target as that Scheme Shareholder's agent and attorney to warrant to Bidder, that all of their Scheme Shares (including all rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme. Target undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

9.5 Title to and rights in Scheme Shares

- (a) 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, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) Immediately upon the deposit of the Initial Scheme Consideration in the manner contemplated by clause 5.3, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target of the name and address of Bidder in the Target Share Register as the holder of the Scheme Shares.

9.6 Appointment of Bidder as attorney and agent for Scheme Shares

- (a) From the time that Bidder has satisfied its obligations in clause 5.3 until Bidder is registered in the Target Share Register as the holder of all Scheme Shares, each Target Shareholder:
 - (i) without the need for any further act by that Target Shareholder, irrevocably appoints Bidder as its sole proxy to (and irrevocably appoints Bidder as its agent and attorney for the purpose of appointing any director or officer of Bidder as that Target Shareholder's sole proxy and, where appropriate, its corporate representative to):
 - (A) attend shareholders' meetings of Target;

- (B) exercise the votes attaching to the Target Shares registered in the name of the Target Shareholder; and
- (C) sign any Target Shareholders' resolution;
- (ii) must take all other action in the capacity of a Target Shareholder as Bidder directs; and
- (iii) acknowledges and agrees that in exercising the powers referred to in clause 9.6(a), Bidder and any person nominated by Bidder under clause 9.6(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.
- (b) From the time that Bidder has satisfied its obligations in clause 5.3 until Bidder is registered in the Target Share Register as the holder of all Scheme Shares, no Target Shareholder may attend or vote at any meetings of Target Shareholders or sign any Target Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 9.6.

9.7 Alterations and conditions to Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions, Target may, by its counsel or solicitors, and with the prior written consent of Bidder (which consent may be given or withheld in its absolute discretion):

- (a) consent on behalf of all persons concerned, including each Target Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target has consented to.

9.8 Enforcement of Deed Poll

Other than in respect of the Earn Out Scheme Consideration, Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder and Note Guarantor (as applicable) on behalf of and as agent and attorney for the Scheme Shareholders.

9.9 Consent

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

9.10 Notices

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

9.11 Duty

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable on the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme; and

- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.11(a).

9.12 Governing law and jurisdiction

This document is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there and courts of appeal from them in connection with matters concerning this document. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

For personal use only

Schedule 8

Cash-Free Debt-Free Balance

The Cash-Free Debt-Free Balance will be calculated as the aggregate of the items set out in the table below and consistent with the worked example provided as Annexure A to this Schedule 8.

		Jun-23	Sep-23	Forecast*	SIA definition
Cash-Free Debt- Free Balance		A\$000	A\$000	A\$000	
1	Cash and cash equivalents	22,071	15,421	12,480	Total cash and cash equivalent
2	Bank Deposits	11,011	11,011	14,686	All Bank guarantees and prepayments which have been provided to AEMO and Office by the Target Group for prudential requirements as at the effective date of the Scheme
3	Adjustment - Prepayment to AEMO	2,615	2,915	Nil	Prudential prepayments paid to AEMO that have been included in Accrued Expenses. For the Permitted Distribution, this prepayment amount will be added back to the Bank Deposit account. For the TPC FY 2023 Annual Report, this Prudential Prepayment amount was equal to \$2,615,000.
4	Security Deposits	491	1,692	1,180	Credit support & Security deposit for Counterparties and Office
5	Goods and services tax payable	-	(168)	(400)	GST Liabilities
6	Borrowings	-	-	-	Total debt
7	Current Tax Liabilities	(4,434)	(3,679)	(1,000)	Current Tax Liabilities
8	Adjustment for cessation of mobile business	-	-	To be determined	Contractual closure between Vodafone and TPC
9	Unpaid transaction fees	-	-	To be determined	Unpaid transaction fees in respect of the Scheme are to be deducted from the Permitted Distribution
10	Permitted Interim Distributions	-	-	To be determined	Permitted Interim Distributions that have been declared but not paid should be deducted in calculating future Permitted Distributions
Cash-Free Debt- Free Balance		31,755	27,192	26,946	

* Forecast is estimated as per the Daily Cash Flow updated to 16 Jan 2024 (Assumed no interim dividend in Mar 2024), approx. to consolidated balance sheet position as at 30 April 2024. These are forecast figures and therefore subject to change. No items included in the Cash-Free Debt-Free Balance calculation are to be double counted.

For personal use only

Annexure A – Worked Example

TPC Consolidated Balance Sheet per TPC FY 2023 Annual Report		Adjustment	After Adjustment	TPC Consolidated Balance Sheet per TPC FY 2024 YTD Management Report		Adjustment	After Adjustment
	Audited Jun 2023 \$		Audited Jun 2023 \$		Actual Sep 23 \$		Actual Sep 23 \$
ASSETS				ASSETS			
Current Assets				Current Assets			
Cash and cash equivalents	22,071,358		22,071,358	Cash and cash equivalents	15,421,421		15,421,421
Trade and other receivable	14,548,191		14,548,191	Trade Receivables	16,365,967		16,365,967
Trade and other receivable	(5,266,112)		(5,266,112)	Expected Credit Losses of Receivables	(5,244,139)		(5,244,139)
Trade and other receivable	8,970,004		8,970,004	Contract Assets (a)	9,877,450		9,877,450
Trade and other receivable	89,973		89,973	Goods and Services Tax Receivable	-		-
Trade and other receivable	30,086		30,086	Other Receivables	22,018		22,018
	-		-	Inventories	-		-
Derivatives held at fair value	938,546		938,546	Cash at Bank and in hand	7,451		7,451
Bank deposits	11,011,297	2,615,000	13,626,297	Bank deposits	11,011,297	2,915,000	13,926,297
Other Assets	-		-	Deferred Commission Costs	13,238		13,238
Other Assets	274,129		274,129	Prepayments	231,259		231,259
Other Assets	491,067		491,067	Security Deposit	1,691,714		1,691,714
Total Current Assets	<u>53,158,539</u>		<u>55,773,539</u>	Total Current Assets	<u>49,397,676</u>		<u>52,312,676</u>
Non-Current Assets				Non-Current Assets			
Property, plant and equipment	1,290,084		1,290,084	Goods and Services Tax payable	1,302,724		1,302,724
Right of use assets	3,437,721		3,437,721	Right of use assets	3,260,752		3,260,752
Deferred tax assets	1,742,173		1,742,173	Deferred tax assets	3,017,202		3,017,202
Total Non-Current Assets	<u>6,469,978</u>		<u>6,469,978</u>	Total Non-Current Assets	<u>7,580,678</u>		<u>7,580,678</u>
TOTAL ASSETS	<u>59,628,517</u>		<u>62,243,517</u>	TOTAL ASSETS	<u>56,978,354</u>		<u>59,893,354</u>
LIABILITIES				LIABILITIES			
Current Liabilities				Current Liabilities			

For personal use only

Trade and other payables	4,075,994		4,075,994	Trade Payables	3,788,762		3,788,762
Trade and other payables	-		-	Other Payables	-		-
Accrued Expenses	10,032,312	2,615,000	12,647,312	Accrued Expenses	8,455,463	2,915,000	11,370,463
Sundry Payables	343,440		343,440	Sundry Payables	273,156		273,156
Goods and services tax payable	-		-	Goods and services tax payable	167,952		167,952
Borrowings	-		-	Borrowings	-		-
Derivatives held at fair value	-		-	Derivatives held at fair value	3,323,148		3,323,148
Lease liabilities	617,845		617,845	Lease liabilities	474,984		474,984
Current tax liabilities	4,433,544		4,433,544	Current tax liabilities	3,679,439		3,679,439
Short term provisions	2,170,373		2,170,373	Short term provisions	2,246,874		2,246,874
Contract liabilities	2,909,136		2,909,136	Contract liabilities	2,819,640		2,819,640
Total Current Liabilities	24,582,644		27,197,644	Total Current Liabilities	25,229,418		28,144,418
Non-Current Liabilities				Non-Current Liabilities			
Long term provisions	113,947		113,947	Long term provisions	113,947		113,947
Lease liabilities	2,808,799		2,808,799	Lease liabilities	2,808,799		2,808,799
Deferred tax liabilities	-		-	Deferred tax liabilities	-		-
Total Non-Current Liabilities	2,922,746		2,922,746	Total Non-Current Liabilities	2,922,746		2,922,746
							-
TOTAL LIABILITIES	27,505,390		30,120,390	TOTAL LIABILITIES	28,152,164		31,067,164
							-
NET ASSETS	32,123,127		32,123,127	NET ASSETS	28,826,190		28,826,190
EQUITY				EQUITY			-
Issued capital	10,372,860		10,372,860	Issued capital	10,398,060		10,398,060
Reserves	661,857		661,857	Reserves	(2,313,987)		(2,313,987)
Retained earnings	21,088,410		21,088,410	Retained earnings	20,742,117		20,742,117
TOTAL EQUITY	32,123,127		32,123,127	TOTAL EQUITY	28,826,190		28,826,190
Permitted Distribution				Permitted Distribution			
Cash and Cash Equivalents	22,071,358		22,071,358	Cash and Cash Equivalents	15,421,421		15,421,421
Bank Deposits	11,011,297	2,615,000	13,626,297	Bank Deposits	11,011,297	2,915,000	13,926,297

Adjustment - Prepayment for AEMO	2,615,000	(2,615,000)	-	Adjustment - Prepayment for AEMO	2,915,000	(2,915,000)	-
Security Deposits	491,067		491,067	Security Deposits	1,691,714		1,691,714
Goods and services tax payable	-		-	Goods and services tax payable	(167,952)		(167,952)
Borrowings	-		-	Borrowings	-		-
Current tax liabilities	(4,433,544)		(4,433,544)	Current tax liabilities	(3,679,439)		(3,679,439)
Adjustment for cessation of mobile business	-		-	Adjustment for cessation of mobile business	-		-
Total Permitted Distribution	31,755,178		31,755,178	Total Permitted Distribution	27,192,041		27,192,041

Annexure B – Pro Rata Adjustment Worked Example

A	Cash Free Debt Free Balance latest Management Accounts e.g. 31 March 2024	\$31,000,000
	Calculation date e.g. 15 May 2024	
	Adjustment for cash profits between the date of the Interim Balance and the Effective Date	
	Add increase in Cash and Cash equivalents held on balance sheet	\$1,000,000
	Less increase in Tax provision (30%)	-\$300,000
	Add PAYG paid after latest Management Accounts and before Calculation date	\$200,000
	Add Increase in Prepayments to AEMO	\$100,000
B	Total Pro rata adjustment	\$1,000,000
	Permitted Distribution (A) + (B)	\$32,000,000

For personal use only

Schedule 9

Note Trust Deed Principles

To the extent acceptable by the Note Trustee, the Note Trust Deed will incorporate the key principles set out below (with such amendments as may be agreed by Bidder and Target in writing).

1 Definitions

Terms used in this Schedule 9 have the meanings given in clause 1.1 of this Agreement, clause 1 of Schedule 5 and as set out below, unless the context requires otherwise.

2 General principles

The Note Trustee is appointed by Bidder as trustee for the Scheme Shareholders in relation to the performance of the following obligations:

- (a) payment of the Earn Out Scheme Consideration by Bidder to the Trust Account Earn Out;
- (b) Target providing written notice to the Note Trustee outlining the amount of Earn Out Scheme Consideration each eligible Scheme Shareholder is entitled to (and the amount of any applicable taxes); and
- (c) payment of the Earn Out scheme Consideration to eligible Scheme Shareholders by the Note Trustee, following receipt of those funds from Bidder.

3 Obligations of the Note Trustee

In accordance with section 283DA of the Corporations Act, as the independent trustee, the Note Trustee's obligations include:

- (a) exercising reasonable diligence to ascertain whether the property of Bidder that is or should be available will be sufficient to satisfy the obligation to pay the Earn Out Scheme Consideration, should it become payable;
- (b) exercising reasonable diligence to ascertain whether Bidder has committed any breaches of the provisions of the Note Trust Deed or Chapter 2L of the Corporations Act; and
- (c) enforcing any rights of Scheme Shareholders in respect to the payment of Earn Out Scheme Consideration should it become payable.

4 Enforcement

- (a) The Note Trustee is entitled to take action in respect to certain events of default under the Note Trust Deed, including against Bidder in respect of any failure by Bidder to pay the Earn Out Scheme Consideration when it becomes due and payable.
- (b) The Scheme Shareholders may pass an ordinary resolution directing the Note Trustee to take enforcement action in respect of certain events of default under the Note Trust Deed.
- (c) Scheme Shareholders do not have a right to take direct enforcement action against Bidder or Target in respect of a default by Bidder or Target under the Note Trust Deed unless they have directed the Note Trustee to take such action and the Note Trustee has failed to commence such action or proceedings within 15 Business Days.

- (d) If the Note Trustee takes any enforcement action in accordance with the terms of the Note Trust Deed, Scheme Shareholders will be bound by the outcome of that enforcement action.

5 Guarantee

The Note Guarantor agrees to guarantee the payment to the Note Trustee of the Earn Out Scheme Consideration, unless alternate surety arrangements in respect of such payment are agreed by Bidder and Target.

6 Nominee Cost Reserve

- (a) The Scheme Shareholder Nominee may direct the Note Trustee (in accordance with the procedures under the Note Trust Deed) to pay either the full amount or a portion of the Nominee Cost Reserve to the Scheme Shareholder Nominee to reimburse any reasonable costs incurred by the Scheme Shareholder Nominee in connection with exercising his or her powers or performing his or her obligations under this Agreement or the Scheme in his or her capacity as Scheme Shareholder Nominee.
- (b) Upon receipt of a direction contemplated under principle 6(a) of this Schedule 9, and where the amount of the costs outlined in the direction is greater than a prescribed *de minimis* amount of \$50,000, the Note Trustee must obtain approval from a simple majority of Noteholders, before approving payment to the Scheme Shareholder Nominee out of funds in the Nominee Cost Reserve.
- (c) Any amounts remaining from the Nominee Cost Reserve on the last day of the final Earn Out Payment Period must be distributed to the Scheme Shareholders.

Executed as an agreement.

Executed in accordance with section 127 of the *Corporations Act 2001* by **Wollar Solar Holding Pty Ltd:**

Director

Director/Secretary

Print Name

Print Name

For personal use only

Executed in accordance with section 127 of the
Corporations Act 2001 by **TPC Consolidated**
Limited:

Director

Director/Secretary

Print Name

Print Name

For personal use only

Executed as an agreement.

Executed in accordance with section 127 of the *Corporations Act 2001* by **Wollar Solar Holding Pty Ltd**:



Director

WEIWEI SHI

Print Name



Director/Secretary

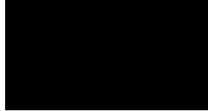
GENG JIA

Print Name

For personal use only



Executed in accordance with section 127 of the
Corporations Act 2001 by **TPC Consolidated
Limited:**



Director
Charles Huang

Print Name



Director/Secretary
Jeffrey Ma

Print Name

For personal use only