

19 July 2021

ASX Announcement

Empired Board Recommends \$1.35 Cash Offer From Capgemini

Highlights

- Empired Limited (**Empired**) has entered into a Scheme Implementation Agreement (**SIA**) with Capgemini Australia Pty Ltd (**Capgemini Australia**), under which Capgemini Australia has agreed to acquire 100% of the issued share capital of Empired for a cash price of A\$1.35 per share (**Scheme Consideration**) (the **Proposal**).
- The Scheme Consideration values the fully diluted equity of Empired at approximately A\$233 million⁽¹⁾ which equates to a normalised EV/EBIT⁽²⁾ multiple of 16.7 times for the financial year ended 30 June 2021.
- The Scheme Consideration represents an attractive premium of 64.6% to the last closing price of A\$0.8200 per share on Friday, 16 July 2021, 59.9% to the 10-day volume weighted average price (**VWAP**) of A\$0.8442 per share, and 59.3% to the 60-day VWAP of A\$0.8472 per share.
- The Proposal will be implemented by a scheme of arrangement (**Scheme**). The Empired Directors unanimously recommend that Empired shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Empired shareholders.
- Empired's CEO, Russell Baskerville, intends to vote all shares within his control (which currently represents approximately 5.8% of the shares on issue) in favour of the Scheme⁽³⁾.
- The implementation of the Scheme is subject to a number of customary and other conditions, including the approval of Empired shareholders and the Court and the granting of a New Zealand Overseas Investment Act (**OIA**) direction order, and is not subject to financing or due diligence conditions.
- Empired shareholders do not need to take any action at this time. A Scheme Booklet containing information relating to the Proposal, the Independent Expert's Report, the reasons for the Empired Directors' unanimous recommendation and details of the

(1) Based on 160,301,595 ordinary shares on issue plus 12,575,751 converted performance rights.

(2) Based on forecast net cash (excluding AASB16 Leases) of A\$7.3 million as at 30 June 2021, and normalised FY21 EBIT of A\$13.5 million (being the midpoint of the guidance provided in this announcement, and which excludes A\$4.9 million of Government JobKeeper subsidy, and any other one-off adjustments).

(3) Based on disclosed terms of the Scheme, and subject to no superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Empired shareholders.

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Scheme meeting, is expected to be despatched to Empired shareholders in late September 2021.

- Capgemini is a global leader in consulting, digital transformation, technology and engineering services, headquartered in Paris, France, and listed on the Euronext Paris stock exchange with a market capitalisation of over €28.0 billion.

Board recommendation and benefits of the Scheme

The Empired Directors unanimously recommend that Empired shareholders vote in favour of the Scheme at the Scheme meeting, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Empired shareholders.

Each Empired Director intends to vote all Empired shares in which he has a relevant interest in favour of the resolution to approve the Scheme, subject to those same qualifications.

The Empired Board believes the Proposal is compelling for Empired shareholders for the following reasons:

- **Attractive premium:** The Scheme Consideration of A\$1.35 per share represents a:
 - 64.6% premium to the closing price of Empired shares of A\$0.8200 per share on Friday, July 16 2021;
 - 59.9% premium to the 10-day VWAP of Empired shares of A\$0.8442 per share to Friday, July 16 2021;
 - 59.3% premium to the 60-day VWAP of Empired shares of A\$0.8472 per share to Friday, July 16 2021; and
 - 62.1% premium to the 90-day VWAP of Empired shares of A\$0.8327 per share to Friday, July 16 2021.
- **Attractive transaction multiple:** the Scheme Consideration equates to an normalised EV/EBIT⁽¹⁾ multiple of 16.7 times for the financial year ended 30 June 2021.
- **Certainty of value:** The Scheme Consideration is 100% cash, providing Empired shareholders with certainty of value and the opportunity to realise their investment for cash, in full.
- **Not subject to financing or due diligence:** the Scheme is not subject to financing or due diligence.

Commenting on the Proposal, Empired's Chairman, Tom Stianos said: *"After considering all the relevant factors, we believe this is a compelling offer for Empired shareholders. It provides shareholders with the opportunity to realise immediate value for their shareholding, at a significant premium to current trading levels."*

Empired's Managing Director, Russell Baskerville said *"Over the past 15 years Empired has been on a journey to build the most respected digital services company across Australia and New Zealand. Our strategy has delivered material growth in shareholder value and we are confident that being part of Capgemini will help to accelerate our combined market position in the coming years."*

Mr Baskerville went on to say *"If implemented, the Scheme will provide outstanding career opportunities for our people and have a positive impact for existing and prospective clients by providing them with access to the significant resources, service capabilities and international experience of Capgemini."*

(1) Excluding JobKeeper of \$4.9 million, and any other one-off adjustments.

"Enterprises are at an inflection point in their cloud adoption," said Olaf Pietschner, CEO for Capgemini in Asia-Pacific and Member of the Group Executive Committee. "Capgemini's extensive transformation expertise combined with Empired's strengths as a leader in Microsoft Azure and Dynamics 365 will open up the full power of digital transformation for our clients in Australia and New Zealand, to run their entire business in the cloud and realize value faster. We look forward to welcoming Empired's talented professionals to Capgemini."

Details of the SIA

Empired has entered into the SIA with Capgemini Australia that sets out the terms and conditions under which the Scheme is to be implemented.

The implementation of the Scheme is subject to a number of customary and other conditions, including the approval of Empired shareholders and the Court, the Independent Expert's Report concluding that the Scheme is in the best interests of Empired shareholders (and the Independent Expert not changing or publicly withdrawing that conclusion), the receipt of a direction order under the OIA and there being no material adverse change or prescribed occurrence. Other conditions include certain contractual consents to the change of control being obtained, Empired maintaining a specified level of key management and employees and Empired not exceeding a maximum net debt threshold. There are no financing or due diligence conditions.

In addition, the SIA contains certain customary exclusivity provisions, including no shop restrictions, no talk restrictions, a notification obligation and a matching right. The SIA also contains certain circumstances under which Empired may be required to pay a break fee to Capgemini Australia or Capgemini Australia may be required to pay a break fee to Empired.

Full details of the conditions to the Scheme, as well as the other terms that have been agreed, are set out in the SIA. A copy of the SIA is attached to this announcement.

Indicative timetable and next steps

Empired shareholders do not need to take any action at this time.

A Scheme Booklet containing information relating to the Proposal, the reasons for the Empired Directors' unanimous recommendation, an Independent Expert's Report, details of the Scheme meeting and other matters relevant to Empired shareholders' consideration of the Scheme will be prepared and is expected to be sent to Empired shareholders in late September 2021.

Empired shareholders will then have the opportunity to vote on the Scheme at a Court-convened meeting, expected to be held in late October 2021. If the Scheme is successfully implemented, Empired shareholders can currently expect to be provided with their cash consideration in mid November 2021.

Set out below is an indicative timetable for the Scheme.

Event	Date
First Court date	Late September 2021
Scheme meeting	Late October 2021
Second Court date	Early November 2021

Effective date	Early November 2021
Record date	Early November 2021
Implementation date	Mid November 2021

These dates are indicative and subject to change.

Trading update

For the financial year ending 30 June 2021, Empired expects:

- Revenue forecast to be in the range of \$186m to \$188m (FY20 \$165.5m)
- Normalised EBITDA⁽¹⁾ forecast to be in the range of \$22m to \$23m (FY20 \$14.8m)
- Normalised EBIT⁽¹⁾ forecast to be in the range of \$13m - \$14m (FY20 \$6.3m)
- Operating cash flow / EBITDA to be between 90% and 95%
- Forecast Net Cash position of \$7.3 million at 30 June 2021

Advisers

Euroz Hartleys Limited is acting as financial adviser and Clayton Utz is acting as legal adviser to Empired in relation to the Proposal.

Luminis Partners is acting as financial adviser and Herbert Smith Freehills is acting as legal adviser to Capgemini in relation to the Proposal.

For more information please contact:

Russell Baskerville
 Managing Director
 Empired Limited
 Ph +61 8 6333 2200

This announcement has been authorised for release by the Empired Board.

Capgemini's press release regarding the Proposal is available via its website, capgemini.com/newsroom

About Empired Limited

Empired Limited is an international IT Services Provider with a broad range of capabilities and a reputation for delivering enterprise class IT services and solutions. Established in 1999, Empired is a publicly listed company (ASX: EPD) formed in Western Australia.

With a team of over 1,000 people located throughout Australia, New Zealand and North America, Empired has built a reputation for service excellence and is a leading provider of business technology solutions to both government and private sectors. We work with clients, leveraging technology solutions to deliver their organisations improved efficiency, productivity and competitive advantage.

Empired provides a broad range of services enabling 'end-to-end' advice and solutions assisting our clients through their digital transformation journey and ensuring robust ongoing lifecycle management.

(1) Excluding JobKeeper of \$4.9 million, and any other one-off adjustments.

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Our flexible service delivery approach and “can do” attitude has enabled Empired to secure clients that range from medium size entities through to some of the world’s largest long standing enterprise’s accounts with services delivered across Australia, New Zealand, South East Asia and beyond.

About Capgemini

Capgemini is a global leader in partnering with companies to transform and manage their business by harnessing the power of technology. The Group is guided everyday by its purpose of unleashing human energy through technology for an inclusive and sustainable future. It is a responsible and diverse organization of 270,000 team members in nearly 50 countries. With its strong 50 year heritage and deep industry expertise, Capgemini is trusted by its clients to address the entire breadth of their business needs, from strategy and design to operations, fueled by the fast evolving and innovative world of cloud, data, AI, connectivity, software, digital engineering and platforms. The Group reported in 2020 global revenues of €16 billion.

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Execution version

Scheme implementation agreement

Capgemini Australia Pty Limited
Bidder

Empired Limited
Target

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Contents

1.	Definitions and interpretation	4
1.1	Definitions	4
1.2	Best and all reasonable endeavours	17
1.3	Business Day	17
1.4	Interpretation	18
2.	Obligations in relation to Scheme	19
2.1	The Target to propose Scheme	19
2.2	The Target and the Bidder to implement Scheme	19
3.	Conditions precedent	19
3.1	Conditions	19
3.2	General obligations in relation to Conditions	23
3.3	Obligations in relation to regulatory approvals	23
3.4	Notice in relation to satisfaction of Conditions	24
3.5	Waiver of Conditions	25
3.6	Consultation on failure of Conditions	25
3.7	Failure to agree	26
3.8	Exception	26
4.	Implementation of the Scheme	26
4.1	The Target's obligations	26
4.2	The Bidder's obligations	30
4.3	Dispute as to Scheme Booklet	31
4.4	Responsibility statement	32
4.5	Reconstitution of the Target Board	32
4.6	Removal of the Target from the official list of ASX	32
4.7	Court proceedings	32
5.	Scheme Consideration	33
5.1	Obligations in respect of the Scheme Consideration	33
5.2	Fractional entitlements and share splitting or division	33
5.3	CGT Withholding Amount	33
6.	Conduct of business	34
6.1	Conduct of the Target's business	34
6.2	Information obligations	37
6.3	Counterparty consents	38
7.	Integration	38
7.1	Access	38
7.2	Existing finance and security	40
8.	Recommendation, intentions and announcements	40
8.1	Target Board Recommendation and Voting Intention	40
8.2	Target Shares in Legacy NZ ESS	41
8.3	Confirmation	41
9.	Target Performance Rights	41
10.	Exclusivity arrangements	41
10.1	No existing discussions	41
10.2	No shop	42
10.3	No talk and no due diligence	42
10.4	Limitation to no talk and no due diligence	42
10.5	Notification of approaches	43
10.6	Matching right	43
10.7	Normal provision of information	44

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10.8	Legal advice.....	45
11.	Reimbursement of Costs.....	45
11.1	Rationale and nature of payment	45
11.2	The Target Payment.....	46
11.3	The Bidder Payment.....	46
11.4	Timing of payment	46
11.5	Compliance with law	47
11.6	One payment only.....	47
11.7	No payment if Scheme Effective	47
11.8	The Target's limitation of liability.....	48
11.9	The Bidder's limitation of liability.....	48
11.10	Survival	48
12.	Liability of directors, officers and employees	48
12.1	Liability of directors, officers and employees.....	48
12.2	Directors and officers insurance	49
12.3	Obligations in relation to directors and officers insurance.....	49
12.4	Directors and officers indemnities	49
12.5	Compliance with law and benefit	49
13.	Representations, warranties and indemnities	50
13.1	Representations and warranties by the Bidder	50
13.2	The Bidder indemnity.....	50
13.3	Qualification of the Bidder Warranties and the indemnity	50
13.4	Representations and warranties by the Target	50
13.5	Target indemnity.....	51
13.6	No double recovery.....	51
13.7	Qualification of the Target Warranties and the indemnities.....	51
13.8	Target Tax Indemnity.....	51
13.9	W&I Policy and limitations on claims in connection with a Target Business Warranty or Target Insured Indemnity	52
13.10	Notifications	54
13.11	Status of representations and warranties	55
13.12	Status and enforcement of indemnities	55
13.13	Necessary tense changes	55
14.	Confidentiality and public announcements	55
14.1	Confidentiality Agreement	55
14.2	Survival of obligations.....	55
14.3	Disclosure on termination of agreement.....	55
14.4	Public announcements	55
15.	Termination and remedies	56
15.1	Limited termination events.....	56
15.2	Termination by the Bidder	56
15.3	Termination by the Target	57
15.4	Effect of termination.....	57
15.5	Remedies.....	57
16.	GST	57
16.1	Interpretation.....	57
16.2	GST exclusive.....	58
16.3	Reimbursements and similar payments	58
16.4	GST payable.....	58
17.	Notices	58
17.1	How notice to be given	58
17.2	When notice taken to be received	59
17.3	Notices sent by more than one method of communication	60

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18.	Entire agreement	60
19.	General	60
	19.1 Amendments.....	60
	19.2 Assignment	60
	19.3 Consents.....	61
	19.4 Costs.....	61
	19.5 Counterparts	61
	19.6 Further acts and documents	61
	19.7 No merger	61
	19.8 No representation or reliance	61
	19.9 Severance.....	61
	19.10 Stamp duties.....	61
	19.11 Waivers.....	62
20.	Governing law and jurisdiction	62
	20.1 Governing law.....	62
	20.2 Jurisdiction.....	62
	Schedule 1 - The Bidder Warranties	63
	Schedule 2 - The Target Scheme Warranties	65
	Schedule 3 – The Target Business Warranties	69
	Schedule 4 - Timetable	84
	Annexure A - Scheme	86
	Annexure B - Deed Poll	87

Scheme implementation agreement

Date	19 July 2021
Parties	<p>Empired Limited ACN 090 503 843 of Level 7, the Quadrant, 1 William Street Perth WA 6000 (Target)</p> <p>Capgemini Australia Pty Limited ABN 11 092 284 314 of Level 7, 77 King Street Sydney NSW 2000 (Bidder)</p>

Background

- A. The Bidder proposes that it will acquire all of the Scheme Shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders.
- B. The Target has agreed to propose the Scheme and issue the Scheme Booklet at the request of the Bidder, and the Target and the Bidder have agreed to implement the Scheme on the terms and conditions of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Agreed Form means a document that has been agreed in writing by the Target and the Bidder on or before the date of this agreement and has been initialled by or on behalf of the Target and the Bidder or acknowledged via email, in each case for the purposes of identification.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Beneficiary means a present or former director or officer of the Target Group in respect of whom the Policy applies.

Bidder Announcement means the announcement of the Scheme by the Bidder in the Agreed Form.

Bidder Counter Proposal has the meaning given in clause 10.6.

Bidder Executive Team means Erwan Chareton, Isabelle Rivière and Olaf Pietschner.

Bidder Group means the Bidder and each of its Related Bodies Corporate.

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

Bidder Information means:

- (a) all information regarding the Bidder or the Bidder Group as is provided by the Bidder to the Target in writing for inclusion in the Scheme Booklet, including information regarding the Bidder or the Bidder Group that is required to be included in the Scheme Booklet by:
- (i) the Corporations Act and the Corporations Regulations 2001 (Cth);
 - (ii) ASIC policy (including the Regulatory Guides); and
 - (iii) all other applicable laws; and
- (b) any other information that the Target and the Bidder agree is Bidder Information,

but excluding the Target Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the Tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet. For the avoidance of doubt, the Bidder Information includes all information that would be required under section 636 of the Corporations Act to be included in a bidder's statement if the Bidder was offering the Scheme Consideration as consideration under a takeover bid.

Bidder Parent means Capgemini S.E., a European company, registered with the French Trade Registry under number 330 703 844 RCS Paris, located at 11, rue de Tilsitt, 75017 Paris, France.

Bidder Payment means the amount of \$2,333,844 (representing the amounts referred to in clause 11.1(d) in respect of the Target).

Bidder Warranties means the representations and warranties made by the Bidder set out in Schedule 1.

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

Business Intellectual Property has the meaning given in Target Business Warranty 6(a).

Cash means cash (whether in hand or credited to any account of the Target or any member of the Target Group) with any financial institution or organisation or company deposits and cash equivalents of the Target or any member of the Target Group, on a consolidated basis including cheques received by, honoured and made payable to the Target or any member of the Target Group prior to the implementation of the Scheme, but excluding:

- (a) any cash and cash equivalents held by the Target or any member of the Target Group in escrow or trust for any other person;
- (b) any cash overdraft amounts, and the amounts required to cover any cheques or similar instruments issued on any accounts of the Target or any member of the Target Group;
- (c) restricted cash, that is cash reserved for a specific purpose and therefore not readily available for immediate or general business (including, but not limited to, restricted cash for bank guarantees, funds deposited with vendors/suppliers, utility companies, and cash deposited under protest);
- (d) corporate Tax receivables and accruals for deferred Taxes;
- (e) derivative or financial securities; and
- (f) the amount of any outstanding claim under any advances or loans.

CGT Withholding Amount has the meaning given in clause 5.3.

Change of Control Contract means each contract referred to in the Agreed Form "List of Change of Control Contracts".

Competing Proposal means a proposed transaction or arrangement (or expression of interest therefor), which, if implemented substantially in accordance with its terms, would result in a Third Party (either directly or indirectly and either alone or together with any Associate):

- (a) acquiring or having a right to acquire, or obtaining a legal, beneficial or economic interest in or control of, all or a substantial part of the business, assets or undertakings of the Target Group;
- (b) acquiring Control of the Target or Intergen Limited;
- (c) acquiring a Relevant Interest in any Target Shares, as a result of which the Third Party, together with any Associates, would have a Relevant Interest in more than 20% of Target Shares or of the shares in Intergen Limited;
- (d) otherwise directly or indirectly acquire or merge, or be involved in an amalgamation or reconstruction (as those terms are used in section 413(1) of the Corporations Act) with the Target or Intergen Limited; or
- (e) require the Target to abandon, or otherwise fail to proceed with, the Transaction,

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

For the avoidance of doubt, each successive material modification or variation of any proposed transaction or arrangement (or expression of interest therefor) in relation to a Competing Proposal will constitute a new Competing Proposal.

Condition means each condition specified in clause 3.1.

Confidentiality Agreement means the confidentiality agreement dated 9 September 2020 between the Target and Bidder Parent.

Consolidated Group means a Consolidated Group or a MEC group as those terms are defined in section 995-1 of the *Income Tax Assessment Act 1997* (Cth) or sections YA1 and FM 35 of the *Income Tax Act 2007* as the context requires.

Control has the meaning given in the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

Data Room means the online data room established by the Target prior to the date of this agreement, the index of which has been provided by the Target to the Bidder and which has been confirmed by the Bidder.

Data Room Q&A means the questions raised by the Bidder during the due diligence process and the responses to those questions given by or on behalf of the Target prior to the date of this agreement (as included in the Data Room).

Decision Time means 6:00 pm on the Business Day before the Second Court Date.

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

Delivery Time means 8:00 am on the Second Court Date.

Disclosed means fairly disclosed:

- (a) by the Target to the Bidder prior to the date of this agreement in the Target Due Diligence Materials or the Target Disclosure Letter; or
- (b) in any announcement made by the Target on ASX or public filings of any member of the Target Group with ASIC, in each case during the three year period prior to the date of this agreement.

Duty means any stamp duty and other duties and similar Taxes, together with any related fees, penalties, fines, interest or statutory charges.

EBITDA means earnings before interest, taxes, depreciation and amortisation, in accordance with the accounting policies and practices applied by the Target in its 2020 audited financial statements and excluding all costs and expenses incurred by the Target in connection with, or in any way associated with, the Scheme process and the Scheme (such costs and expenses includes all related fees payable to external advisers or service providers of the Target, the cost of the vesting or otherwise of the Target Performance Rights and any associated costs, and any retention payments payable to Target Employees on or prior to the Implementation Date).

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

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

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

End Date means the date that is 7 months after the date of this agreement or such other date agreed in writing between the Target and the Bidder.

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

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

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

French Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Paris, France.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or *Goods and Services Tax Act 1985* (NZ) as the context requires.

GST Group has the same meaning as given in the GST Act.

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

Impugned Amount has the meaning given in clause 11.5.

Income Tax Act means the Income Tax Act 2007 (NZ).

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

Independent Expert's Report means the report (including the initial report and any update, revision, amendment, addendum or supplementary report) from the Independent Expert in respect of whether the Scheme is in the best interests of Target Shareholders.

Insolvency Event means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity or the entity being deregistered as a company or dissolved;
- (d) an administrator of the entity being appointed;
- (e) the entity being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act;
- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property, business or assets of the entity;
- (h) the entity ceases, or threatens to cease, to carry on substantially all the business conducted by it as at the date of this agreement; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that entity under the laws of any jurisdiction.

Intellectual Property Right means all intellectual and industrial property and proprietary rights of whatever nature throughout the world, and all rights, titles and interests therein (whether registered or unregistered) conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with:

- (a) business names;
- (b) trade or service marks;
- (c) any right to have information kept confidential; and
- (d) patents, patent applications, drawings, discoveries, inventions, improvements, developments, modifications, processes, trade secrets, technical data, formulae, computer programs, data bases, know how, logos, designs, design rights,

copyright, photos, videos, website content, domain names and similar industrial or intellectual property rights.

Landlord means a landlord, head landlord, licensor or any party granting an occupancy right or consenting to an occupancy right, under a Property Lease.

Legacy NZ ESS means the Intergen employee share scheme the terms of which are set out in the Legacy NZ ESS Trust Deed.

Legacy NZ ESS Trust Deed means the trust deed in respect of the Legacy NZ ESS between Intergen Limited and Intergen ESS Limited dated on or about 29 October 2015.

Listing Rules means the official listing rules of ASX.

Management Accounts means each of the documents in folders 05.04 and 05.07 of the Data Room.

Material Contract means each contract referred to in the Agreed Form "List of Material Contracts".

Maximum Net Debt Amount means \$20 million.

Net Debt means Specified Indebtedness less Cash.

OIO means the Overseas Investment Office (New Zealand).

Permitted Financial Indebtedness means any specific financial indebtedness that is agreed by the Bidder as not being paid out in connection with implementation of the Scheme.

Permitted Security Interest means:

- (a) a charge or lien arising in favour of a Regulatory Authority by operation of statute in the ordinary course of the business of the Target Group;
- (b) any mechanics', workmen's or other charge or lien arising in the ordinary course of the business of the Target Group;
- (c) any retention of title arrangement, hire purchase, conditional sale arrangement, purchase money security interest or arrangements having a similar effect (including arising from any lease of goods or consignment arrangement), in each case, arising in favour of a supplier of goods or services 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 described in section 12(3) of the PPSA;
- (f) any netting or set-off arrangement entered into by any member of the Target Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of the Target Group and credit balances of members of the Target Group;
- (g) any payment or close out netting or set-off arrangement pursuant to any transactional banking facilities or any Treasury Transaction or foreign exchange transaction entered into by a member of the Target Group which constitutes Permitted Financial Indebtedness, excluding any Security under a credit support arrangement;
- (h) any Encumbrance registered or approved in writing by the Bidder;

- (i) any Encumbrance relating to any Permitted Financial Indebtedness; and
- (j) unless otherwise agreed in writing between the Target and the Bidder, any Encumbrance which has been Disclosed in the Target Due Diligence Materials.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Policy means the Target Group directors' and officers' insurance policy in effect at the date of this agreement.

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

PPS Register means the register established under the PPSA.

Recommendation has the meaning in 8.1(a)(i).

Record Date means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

Regulator's Draft has the meaning in clause 4.1(e).

Regulatory Authority means any foreign or Australian:

- (a) government, department, minister or agency of any government and any other governmental, semi-governmental, administrative, fiscal, monetary or judicial body, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government; and
- (b) other authority, agency, tribunal, commission or similar entity having powers or jurisdiction under any law (including Tax Law) or regulation or the listing rules of any recognised stock or securities exchange.

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

Regulatory Review Period means the period from the date on which the Target provides the Regulator's Draft to ASIC in accordance with clause 4.1(e) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Relevant Right means in respect of a contract to which a member of the Target Group is a party, a right to:

- (a) terminate, cancel, rescind, vary, amend or modify the contract or any part of it;
- (b) exercise, enforce or accelerate any right under that contract; or
- (c) benefit from the operation of a provision which automatically terminates, varies, amends or modifies the contract,

(including where that Relevant Right is subject to (x) the satisfaction or failure of a contingency or condition or (y) one or more of the Conditions being satisfied or waived or (z) the effluxion of time) as a direct result of:

- (d) the Bidder entering into this agreement;
- (e) a member of the Target Group performing its obligations under this agreement;
- (f) any public announcement or public disclosure of the Transaction;
- (g) a member of the Bidder Group acquiring, or acquiring a Relevant Interest in, any Target Shares;
- (h) a member of the Bidder Group acquiring control of the Target;
- (i) a member of the Bidder Group implementing or seeking to implement any of its intentions for the Target as described in the Scheme Booklet; or
- (j) any Target director supporting the Scheme or making a recommendation that Target Shareholders vote in favour of the Scheme.

Representatives means, in relation to a party, the directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

Run Off Cover has the meaning given in clause 12.2.

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

Scheme Booklet means the Scheme Booklet to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be despatched to Target Shareholders.

Scheme Consideration means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$1.35 for each Scheme Share subject to adjustment in accordance with clause 5.

Scheme Meeting means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Share means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder or a Related Body Corporate of the Bidder as at the Record Date.

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

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

Security Interest means a security interest as defined in section 12 of the PPSA.

Specified Indebtedness means:

- (a) provision for all borrowings including debit balances at banks or financial institutions (including outstanding interest and bank fees) consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended

30 June 2020 but not including lease liabilities which if it were not for application of AASB16 Leases would not be recognised as a liability (i.e. contracts classified as operating leases prior to application of the standard);

- (b) provision for the accrued long service leave and annual leave of the employees of the Target Group consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020 tax effected at the Australian corporate Tax rate of 30% (that is, the gross provision for accrued long service leave and annual leave multiplied by 70%);
- (c) provision for all relevant transaction costs (including lawyers and financial advisers);
- (d) provision for all interest rate swaps, currency, futures contract, forward exchange contracts, option contracts or other hedging agreements consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020 tax effected at the Australian corporate Tax rate of 30% (that is, the gross provision multiplied by 70%);
- (e) provision for all net Tax liabilities consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020 but excluding net GST liabilities, PAYG and PAYE accruals (except overdue amounts) on ordinary remuneration and sales commissions and deferred Tax assets and deferred Tax liabilities;
- (f) provision for pre-billed and unearned income consistent with Australian accounting principles and the policies and practices of the Target Group adopted in the preparation of the Target's audited financial statements for the financial year ended 30 June 2020;
- (g) receivables sold or discounted (other than any receivables to the extent they are sold or discounted on a non-recourse basis);
- (h) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption;
- (i) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (j) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution (including any banker's acceptance);
- (k) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money;
- (l) dividends declared but payable;
- (m) any compensation amounts payable or that will become due and payable to executives or any other employees as a result of the transaction including but not limited to short and long term incentives and any other bonus or incentive structures but not including any non-cash charge or settlement arising in accordance with AASB2 Share-based Payment;
- (n) accrued but unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations on any financial indebtedness referred to in paragraphs (a) to (m) above; and

- (o) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to above.

Subsidiary has the meaning given to that term in the Corporations Act.

Superior Proposal means a bona fide Competing Proposal, other than the kind referred to in paragraph (c) of the definition of Competing Proposal, which the Target Board, acting in good faith and after receiving written legal advice from external legal advisers and written financial advice from external financial advisers, considers to be:

- (a) reasonably capable of being completed in a reasonable timeframe; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders than the Scheme (and, if applicable, than the Transaction as amended or varied following application of the matching right set out in clause 10.6),

in each case taking into account all aspects of the Competing Proposal, including the terms and conditions of the Competing Proposal, the price and financial value of the Competing Proposal, timing considerations and any other matters relevant to the Competing Proposal being contemplated.

TAA means the Taxation Administration Act 1953 (Cth).

Takeovers Panel means the Takeovers Panel constituted under the Australian Securities and Investments Commission Act 2001 (Cth).

Target Announcement means the announcement of the Scheme by the Target in the Agreed Form.

Target Board means the board of directors of the Target.

Target Business Warranties means the representations and warranties made by the Target set out in Schedule 3.

Target Disclosure Letter means the letter (if any) executed by the Target and given to the Bidder by the date of this agreement.

Target Due Diligence Materials means:

- (a) all information and documents provided to the Bidder at least one Business Day prior to the date of this agreement, by or on behalf of the Target in the Data Room; and
- (b) the questions raised by the Bidder during the due diligence process and the responses to those questions given by or on behalf of the Target prior to the date of this agreement (as included in the Data Room).

Target Employee means any employee of a member of the Target Group who is employed as at the date of this agreement.

Target Executive Team means Russell Baskerville, David Hinton and Simon Bright.

Target Group means the Target and each of its Related Bodies Corporate.

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

Target Information means all information included in the Scheme Booklet, other than the Bidder Information, the Independent Expert's Report and any statement on the letterhead of

the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet.

Target Insured Indemnity means each of:

- (a) the indemnity given in clause 13.5(c); and
- (b) the Target Tax Indemnity.

Target Key Employee means any Target Employee who receives base salary plus statutory superannuation in excess of \$200,000 per annum.

Target Long Term Incentive Plan means the "Long Term Incentive Plan" operated by the Target.

Target Material Adverse Change means any event, matter, change or circumstance occurring, discovered or announced between the date of this agreement and the Delivery Time (including any action taken by a Regulatory Authority) which, whether individually or when aggregated with all such events, matters, changes, or circumstances or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have (after taking into account any matter which offsets the impact of the event, change or circumstance and in each case other than those events, changes or circumstances):

- (a) a material adverse change with respect to the Target's business, reputation, operations, employees, assets, liabilities or capital that would have a materially adverse effect on the Target's business, operations, financial position, performance or prospects which, for the avoidance of doubt includes the effect of ceasing or preventing the carrying on of the businesses and operations of the Target Group in substantially the same manner as those businesses and operations that are carried on as at the date of this agreement; or
- (b) the effect of diminishing:
 - (i) the consolidated net assets of the Target Group by at least 5% compared to the consolidated net assets of the Target as at 30 June 2021;
 - (ii) the consolidated EBITDA of the Target Group by an amount the equivalent of 15% or more of the consolidated EBITDA of the Target Group for the financial year ending 30 June 2022, as against the management budget for that financial year Disclosed to the Bidder in document 05.08.11 in the Data Room; or
 - (iii) the consolidated revenue of the Target Group by an amount the equivalent of 5% or more of the consolidated revenue of the Target Group for the financial year ending 30 June 2022, as against the management budget for that financial year Disclosed to the Bidder in document 05.08.11 in the Data Room,

other than those events, changes or circumstances:

- (c) contemplated or required to be done by the Target under the Transaction Documents;
- (d) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has approved the proposed matter in writing;
- (e) done or not done at the written request of the Bidder, including any consequences arising as a result of such matters;

- (f) that have been Disclosed by the Target prior to the date of this agreement; or
- (g) resulting from a change in any legislation or regulation (including any generally accepted accounting principles or the interpretation of them), any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority (whether or not retrospective in effect).

Target Payment means the amount of \$2,333,844 (representing the amounts referred to in clause 11.1(d) in respect of the Bidder).

Target Performance Rights means performance rights in respect of Target Shares issued pursuant to the Target Long Term Incentive Plan.

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

- (a) the Target converting all or any of its securities into a larger or smaller number of securities;
- (b) a member of the Target Group resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) a member of the Target Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act (or any other applicable law);
- (d) a member of the Target Group issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right including any issue or grant under the Legacy NZ ESS (other than the issue of Target Shares upon exercise or vesting of any Target Performance Rights on issue as at the date of this agreement in accordance with their terms);
- (e) a member of the Target Group issuing, or agreeing to issue, convertible notes or any other security convertible into shares;
- (f) the Target agreeing to pay, announcing, declaring, making, distributing or paying a dividend or any other form of distribution of profits or assets or return of capital to its members;
- (g) the Target or any other member of the Target Group disposing of the whole or a substantial part of its business or property;
- (h) the Target or any other member of the Target Group creating, or agreeing to create, any Encumbrance over any of its business or property other than in the ordinary course of business; or
- (i) an Insolvency Event occurring in relation to a member of the Target Group, other than an event:
 - (j) required by law or a Regulatory Authority;
 - (k) contemplated or required to be done by the Target under the Transaction Documents;

- (l) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has approved the proposed matter in writing; or
- (m) that has been Disclosed by the Target prior to the date of this agreement.

Target Scheme Warranties means the representations and warranties made by the Target set out in Schedule 2.

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

Target Shareholder each person registered in the Target Share Register as the holder of one or more Target Shares.

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

Target Tax Indemnity means the indemnity given by the Target under clause 13.8.

Target Warranties means, together, the Target Scheme Warranties and the Target Business Warranties.

Tax means any tax, levy, excise, Duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Tax Costs means all costs and expenses incurred in managing an inquiry or conducting any disputing action in relation to a Tax Demand.

Tax Demand means:

- (a) a demand or assessment from a Regulatory Authority requiring the payment of any Tax for which any member of the Target Group may be liable under this agreement;
- (b) any document received from a Regulatory Authority administering any Tax assessing, imposing, claiming or indicating an intention to claim any Tax from a member of the Target Group;
- (c) a notice to a contributing member of a Consolidated Group (also being a member of the Target Group) given under section 721-15(5) or 5(A) of the *Income Tax Assessment Act 1997* (Cth);
- (d) a notice to a member of a GST Group (also being a member of the Target Group) in relation to section 444-90(1) of Schedule 1 to the TAA; or
- (e) a lodgement of a Tax return (for a member of the Target Group) or a request for an amendment to a lodged Tax return (for a member of the Target Group) under a law about self-assessment of Tax.

Tax Law means any law relating to Tax.

Tax Warranties means the warranties given in clause 14 of the Target Business Warranties set out in Schedule 3.

Third Party means a person other than the Bidder, the Target, the Bidder Group or the Target Group.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 4, or such other indicative timetable as the Target and the Bidder agree in writing.

Transaction means the acquisition by the Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

Transaction Documents means:

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

Treasury Transaction means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

Trust Account means an Australian dollar denominated trust account operated by or on behalf of the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 5.1.

Voting Intention has the meaning given in clause 8.1(a)(ii).

W&I Policy means a policy of warranty and indemnity insurance and any excess policies that may be issued to the Bidder on or after the date of this agreement in respect of some or all of the Target Warranties and the Target Insured Indemnities.

W&I Policy Inception Date means the date on which the W&I Policy commences, but only if all conditions precedent under the W&I Policy (including payment in full of all premiums and other charges) have been satisfied in full or validly waived by the insurer in accordance with the terms and conditions of the W&I Policy.

Westpac Facility Agreement has the meaning given in clause 7.2.

1.2 Best and all reasonable endeavours

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

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or the payment of reasonable expenses or costs payable in connection with the Scheme and as contemplated by the Transaction Documents to procure the relevant thing;
- (b) agree to commercially onerous or unreasonable conditions; or
- (c) commence or defend any legal action or proceeding against any person,

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

1.3 Business Day

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

1.4 Interpretation

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

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to an event, matter or circumstance being **fairly disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person experienced in transactions similar to the Transaction and experienced in business similar to any business conducted by the Target Group (if disclosed by the Target) or the Bidder Group (if disclosed by the Bidder) to identify the nature, substance and scope of the relevant event, matter or circumstance (provided that the potential financial effect of the relevant event, matter or circumstance was reasonably ascertainable from the information so disclosed);
- (k) a reference to the **Target and its Related Bodies Corporate** (or similar) is a reference to the Target and its Related Bodies Corporate that were Related Bodies Corporate of the Target as at the date of this agreement, and a reference to the **Bidder and its Related Bodies Corporate** (or similar) is a reference to the Bidder and its Related Bodies Corporate that were Related Bodies Corporate of the Bidder as at the date of this agreement;
- (l) a reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:

- (i) in respect of the Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Bidder Executive Team was employed by the Bidder at the relevant time; and
- (ii) in respect of the Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by the Target at the relevant time;
- (m) a reference to \$ or dollar is to Australian currency;
- (n) a reference to **accounting standards** is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;
- (o) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (p) a reference to a date or time is to that date or time in Perth, Australia; and
- (q) this agreement (including any term or condition of it) must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Obligations in relation to Scheme

2.1 The Target to propose Scheme

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

2.2 The Target and the Bidder to implement Scheme

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

3. Conditions precedent

3.1 Conditions

Subject to this clause 3.1, the Scheme will not become Effective and the obligations of the Target and the Bidder to complete the implementation of the Scheme are not binding until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit and waive	Responsibility to satisfy
(a) (Scheme shareholder approval) Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	The Target
(b) (Court approval of Scheme) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	The Target
(c) (OIO) before the Scheme Meeting, the Bidder has received a direction order under Part 3 (<i>National security and public order risks management regime</i>) of the Overseas Investment Act 2005 (NZ) in respect of the Transaction which is either unconditional or subject only to conditions which are reasonably acceptable to the Bidder;	The Bidder and the Target	The Bidder
(d) (Regulatory approvals) on or before the Delivery Time, all consents, waivers and approvals from a Regulatory Authority which the Target and the Bidder (acting reasonably) agree in writing are necessary to implement the Scheme are granted or obtained and none of those consents, waivers and approvals have been withdrawn, cancelled or revoked. For the avoidance of doubt, this includes, but is not limited to, ASIC and ASX having issued or provided such consents or approvals or having done such other acts which the Target and the Bidder agree (acting reasonably) are necessary to implement the Scheme, or the Bidder having done such other acts which the Target and the Bidder (acting reasonably) agree in writing are necessary to implement the Scheme. If such consents, approvals or other acts are subject to conditions, those conditions must be acceptable to the Target and the Bidder (acting reasonably);	The Target and the Bidder	In respect of each agreed consent, waiver or approval, the party who has the legal obligation to obtain it
(e) (No restraint) no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing, restraining, prohibiting or materially adversely affecting any of the	The Target and the Bidder	The Target and the Bidder

Condition	Right to benefit and waive	Responsibility to satisfy
transactions contemplated by this agreement is in effect at the Delivery Time;		
(f) (Independent Expert's Report) the Independent Expert's Report concludes that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw that conclusion prior to the Delivery Time;	The Target	The Target
(g) (Change of Control Contracts) (i) on or before the Delivery Time, the Target has received a written confirmation under or in respect of each of the Change of Control Contracts stating that the counterparty agrees not to exercise any Relevant Rights; and (ii) as at the Delivery Time, a Relevant Right has been exercised in respect of no more than five Material Contracts (where for this purpose Material Contracts do not include Change of Control Contracts);	The Bidder	The Target
(h) (No Target Material Adverse Change) no Target Material Adverse Change occurs before the Delivery Time;	The Bidder	The Target
(i) (No Target Prescribed Occurrence) no Target Prescribed Occurrence occurs, and the Target is not in material breach of clause 6.1, before the Delivery Time;	The Bidder	The Target
(j) (Target Scheme Warranties) the Target Scheme Warranties are true and correct in all material respects as at the time they are given or made;	The Bidder	The Target
(k) (Bidder Warranties) the Bidder Warranties are true and correct in all material respects as at the time they are given or made;	The Target	The Bidder
(l) (Target Employee retention) of the Target Employees employed by the Target Group as at the date of this agreement, at least:	The Bidder	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
<p>(i) 90% are employed by the Target Group as at 31 October 2021;</p> <p>(ii) 88% are employed by the Target Group as at the earlier of 30 November 2021 and the Decision Time;</p> <p>(iii) 86% are employed by the Target Group as at the earlier of 31 December 2021 and the Decision Time; and</p> <p>(iv) 84% are employed by the Target Group as at the earlier of 31 January 2022 and the Decision Time,</p> <p>(excluding any employees who have resigned before the date of this agreement and all independent contractors);</p>		
<p>(m) (Target Key Employee retention) of the Target Key Employees employed by the Target Group as at the date of this agreement, at least:</p> <p>(i) 90% are employed by the Target Group as at 31 October 2021;</p> <p>(ii) 88.5% are employed by the Target Group as at the earlier of 30 November 2021 and the Decision Time;</p> <p>(iii) 87% are employed by the Target Group as at the earlier of 31 December 2021 and the Decision Time; and</p> <p>(iv) 85.5% are employed by the Target Group as at the earlier of 31 January 2022 and the Decision Time,</p> <p>(excluding any employees who have resigned before the date of this agreement and all independent contractors); and</p>	The Bidder	The Target
<p>(n) (Maximum Net Debt Amount) on the last day of the calendar month before each of the Scheme Meeting and the Second Court Date (each a Relevant Date) the Target provides written evidence to the Bidder that establishes to the Bidder's reasonable satisfaction that as</p>	The Bidder	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
at the Relevant Date, the Target's Net Debt is equal to or less than the Maximum Net Debt Amount.		

3.2 General obligations in relation to Conditions

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

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition (or specified in respect of a particular regulatory approval in the case of the Condition in clause 3.1(d)), that party must use its best endeavours to procure that that Condition is satisfied (only to the extent of the particular regulatory approval in the case of the Condition in clause 3.1(d)) as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if the Target and the Bidder are specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and
- (c) the Target and the Bidder must each, to the extent that it is within its or any of its Subsidiaries' respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

3.3 Obligations in relation to regulatory approvals

Without limiting clause 3.2, to the extent that clause 3.2 requires a party to use best endeavours to procure that a regulatory consent, waiver or approval is obtained, that party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b) and the final sentence of this clause 3.3, lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory consent, waiver or approval is obtained and take all procedural steps it is responsible for as part of such consent, waiver or approval process, including (subject to clause 3.3(b) and the final sentence of this clause 3.3) responding to requests for information at the earliest practicable time and using its best endeavours to obtain such consent, waiver or approval as soon as practicable after the date of this agreement;
- (b) consult with the other party in advance of, and before sending, all communications with, or submissions or applications to, any Regulatory Authority relating to any regulatory consent, waiver or approval and provide the other party with a draft copy of such communications, submissions or applications as soon as practicable and consider in good faith any reasonable comments received from the other party;
- (c) keep the other party informed of progress in relation to each such regulatory consent, waiver or approval and of any material matters raised by, or conditions,

material actions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory consent, waiver or approval; and

- (d) provide copies, on a confidential basis, to the other party of all documents and other communications provided to and received from each relevant Regulatory Authority in relation to each such regulatory consent, waiver or approval (including before the date of this agreement),

provided that:

- (e) the party applying for the consent, waiver or approval may withhold or redact information or documents if and to the extent that they are confidential to a Third Party (including information regarding the Bidder Group's corporate structure) or contain any personal data relating to directors, officers or employees of the Bidder Group or the Target Group (as applicable);
- (f) nothing in this clause 3.3 requires a party to disclose materially commercially sensitive information to the other party and so such information can be redacted;
- (g) the party applying for the consent, waiver or approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b); and
- (h) there is no need to provide copies of immaterial, procedural communications.

The other party must provide the applicant for a regulatory consent, waiver or approval with all assistance and information reasonably requested by the applicant in connection with the application and submissions for obtaining that consent, waiver or approval.

3.4 Notice in relation to satisfaction of Conditions

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
- (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
- (ii) any fact or circumstance that it becomes aware of which does or will result in, or is reasonably likely to result in, that Condition becoming incapable of satisfaction or in that Condition not being satisfied in accordance with its terms (including before the time and date specified for its satisfaction, or being satisfied by the End Date, if no such time and date is specified); and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will or does prevent a Condition from being satisfied and where a party is entitled to waive that Condition, following receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as reasonably practicable after receipt of that notice (in any event before the Decision Time) as to whether the party waives the breach, non-fulfilment or non-satisfaction of the Condition resulting from the occurrence or event.

3.5 Waiver of Conditions

- (a) A Condition is only for the benefit of:
- (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
 - (ii) if both the Target and the Bidder are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
- (i) if the Condition is for the benefit of one party, by that party by written notice to the other party; or
 - (ii) if the Condition is for the benefit of both the Target and the Bidder, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
- (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

3.6 Consultation on failure of Conditions

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition (or by the End Date, if no such time and date is specified);
- (b) there is an act, failure to act, event or occurrence which does, will, or which either party becomes aware does or will, prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (or by the End Date, if no such time and date is specified) and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement; or
- (c) the Scheme has not, or it becomes more likely than not that the Scheme will not, become Effective by the End Date,

then the Target and the Bidder must consult, acting reasonably and in good faith, with a view to determining whether:

- (d) the Scheme may proceed by way of alternative means or methods so as to achieve an outcome that is:
 - (i) commercially substantially the same as the Scheme; and

- (ii) no less favourable to Target Shareholders than would result from the implementation of the Scheme;
- (e) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court;
- (f) to extend the End Date; or
- (g) do all, or any combination of, the matters listed in clauses 3.6(d) to 3.6(f) (inclusive).

3.7 Failure to agree

If the Target and the Bidder are unable to reach an agreement under clause 3.6 within 5 Business Days after the commencement of consultation under that clause (or any shorter period ending at the Decision Time) then, in each case before the Delivery Time:

- (a) subject to clauses 3.7(b) and 3.8, either party may terminate this agreement by writing to the other party; or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this agreement by writing to the other party.

3.8 Exception

A party will not be entitled to terminate this agreement pursuant to clause 3.7 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:

- (a) a breach of this agreement by that party; or
- (b) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition or preventing the Scheme becoming Effective.

4. Implementation of the Scheme

4.1 The Target's obligations

The Target must use its best endeavours to implement the Scheme in accordance with the Timetable (and must consult with the Bidder on a regular basis about its progress in meeting the steps in the Timetable by the relevant dates) and, in particular, the Target must:

- (a) **(Scheme Booklet)** as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws, Regulatory Guide 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) **(Consult with the Bidder in relation to the Scheme Booklet)** consult with the Bidder as to the content and presentation of the Scheme Booklet (noting that the Target has ultimate discretion with respect to the preparation, content and presentation of the Scheme Booklet other than as expressly provided in this agreement) including:
 - (i) allowing the Bidder a reasonable opportunity to review and make comments on drafts of the Scheme Booklet, including the penultimate drafts within a reasonable time prior to submission with ASIC (noting that the Bidder's review of the Independent Expert's Report will be limited to be factual accuracy review);

- (ii) taking any reasonable comments made by the Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
- (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Bidder to review the Regulator's Draft before the date of its submission; and
- (iv) obtaining the 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), such consent not to be unreasonably withheld or delayed;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (d) **(Approval of draft Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (e) **(ASIC review)** as soon as reasonably practicable, and by no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet **(Regulator's Draft)** to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act and:
- (i) provide a copy of the Regulator's Draft to the Bidder as soon as practicable thereafter;
- (ii) liaise with ASIC as necessary and to the extent reasonably practicable during the Regulatory Review Period; and
- (iii) keep the Bidder informed in relation to any matters raised by ASIC or ASX in connection with the Scheme Booklet or the Scheme and use reasonable endeavours to consult with the Bidder and take into consideration comments made by the Bidder in relation to, or to resolve, any such matters;
- (f) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
- (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and
- (ii) a letter stating that, pursuant to section 411(17)(b) of the Corporations Act, ASIC has no objection to the Scheme;
- (g) **(Court documents)** prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws and provide the Bidder with drafts of those documents for the purpose of allowing the Bidder a reasonable opportunity to review and make comments on draft documents, which the Target shall consider in good faith;
- (h) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Target will undertake 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;

- (i) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (j) **(Approval of Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to Target Shareholders;
- (k) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet);
- (l) **(Register Scheme Booklet)** request that ASIC registers the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (m) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting. The Target must not, and must not request the Court to, adjourn or postpone the Scheme Meeting without prior consultation with the Bidder, except where there is a Competing Proposal;
- (n) **(Update Scheme Booklet)** if it becomes aware of information after the date of despatch of the Scheme Booklet which is required to be disclosed to Target Shareholders under any applicable law which has not already been disclosed to Target Shareholders, or that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect, as expeditiously as practicable:
- (i) inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law; and
 - (ii) provide the Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 4.1(n) and consult with the Bidder as to the content and presentation of such documents;
- (o) **(Information)**: subject to all applicable laws, provide reasonable updates to the Bidder regarding the Scheme, the Scheme Shareholders and Target Shareholders including, without limiting clause 4.1(t)(iii), copies of the share and other registers which the Bidder reasonably requires to:
- (i) understand the ownership of Target Shares (including the results of any directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act, and the Target agrees to give such directions upon reasonable request by the Bidder for one of the purposes referred to in this clause 4.1(o)(i) or clause 4.1(t)(iii)); or
 - (ii) review the tally of proxy appointments and directions received by the Target before the Scheme Meeting;
- (p) **(ASX listing)** use its best endeavours to ensure that the Target continues to be admitted to ASX, and that Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day immediately following the Implementation Date;
- (q) **(Suspension)** apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;

- (r) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(b)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (s) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Bidder by 5:00 pm on the Business Day prior to the Second Court Date;
- (t) **(Implementation of Scheme)** if the Scheme is approved by the Court:
- (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00 pm on the Business Day following the day of receipt of such office copy (or such other date as is agreed between the Target and the Bidder in writing);
 - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iii) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme, including within one Business Day after the Record Date providing a copy of the Target Share Register as at the Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Record Date) in such form as the Bidder may reasonably require; and
 - (iv) subject to the Bidder satisfying its obligations under clause 5.1(b), on the Implementation Date:
 - A. on behalf of Scheme Shareholders, execute proper instruments of transfer and effect the transfer of Scheme Shares to the Bidder in accordance with the Scheme; and
 - B. register all transfers of Scheme Shares to the Bidder in accordance with the Scheme;
- (u) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration to Target Shareholders, including:
- (i) meeting with key Target Shareholders at the reasonable request of the Bidder; and
 - (ii) consulting with the Bidder and undertaking reasonable proxy solicitation actions so as to promote the merits of the Transaction and encourage Target Shareholders to vote in favour of the Scheme, subject to applicable law and ASIC policy. The Target shall, upon reasonable request by the Bidder made prior to commencement of the Scheme Meeting, inform the Bidder of the total number of proxy votes received by the Target in favour of, against, abstaining from voting or giving discretion to the proxy to vote on the Scheme; and

- (v) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

4.2 The Bidder's obligations

The Bidder must use its best endeavours to assist the Target to implement the Scheme in accordance with the Timetable (and must consult with the Target on a regular basis about its progress in meeting the steps in the Timetable by the relevant dates) and, in particular, the Bidder must:

- (a) **(Draft of the Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with the Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;
- (b) **(Final form of the Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the draft of the Scheme Booklet provided by the Target and provide comments on that draft as soon as reasonably practicable and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Scheme Booklet;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Target all evidence of such processes as may be reasonably requested;
- (f) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Target or its Representatives in connection with:
- (i) the preparation of the Scheme Booklet (including any supplemental disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and
 - (ii) the Target in applying for any regulatory modifications determined appropriate or necessary by the Target (and provide any necessary consents in relation to such applications);
- (g) **(Liaise with ASIC and ASX)** provide all reasonable assistance requested by the Target to assist the Target to resolve any matters raised by ASIC or ASX regarding the Scheme Booklet or the Scheme;
- (h) **(Approval of the Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Scheme Booklet, and in any event before a draft of the Scheme Booklet is lodged with ASIC and if required by the Target again before the Scheme Booklet is despatched to Target Shareholders, confirm in writing to the Target that:
- (i) the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet), such consent not to be unreasonably withheld or delayed; and
 - (ii) the Bidder Information in the form and context in which it appears in the draft of the Scheme Booklet is not misleading or deceptive, does not

contain any omission and is in a form appropriate for despatch to Target Shareholders (subject to the approval of the Court);

- (i) **(Keep the Target informed)** promptly inform the Target if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is or has become misleading or deceptive in any respect or contains any omission (including of any information required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any respect or contains any material omission;
- (j) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to the Target;
- (k) **(Representation)** procure that, if requested by the Target, it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Bidder will undertake 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;
- (l) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Target by 5:00 pm on the Business Day prior to the Second Court Date;
- (m) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll;
- (n) **(Promote merits of Transaction)** participate in efforts requested by the Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key employees of the Target and key Target Shareholders at the request of the Target;
- (o) **(CGT declarations)** not despite anything else in this agreement, require any Scheme Shareholder to provide any warranty, representation or declaration under section 14-225 of Schedule 1 to the TAA; and
- (p) **(Other things necessary)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

4.3 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the Target and the Bidder, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), the Target will, acting in good faith, make such amendments to that information in the Scheme Booklet as the Bidder may reasonably require; and
- (b) otherwise, the Target will, acting in good faith, decide the final form of that aspect of the Scheme Booklet provided that, if the Bidder disagrees with such final form and content, the Target must include a statement to that effect in the Scheme Booklet.

4.4 Responsibility statement

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information;
- (b) the Target is responsible for the Target Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Bidder will not be responsible for any Target Information and will disclaim any liability for the Target Information;
- (c) the Independent Expert is responsible for the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a statement on the letterhead of the Target's Tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders, that tax adviser is responsible for that letter.

4.5 Reconstitution of the Target Board

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 5, the Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of the Target of such persons as nominated by the Bidder in writing to the Target, subject to those persons being appointed having provided to the Target a duly signed consent to act as a director of the relevant companies; and
- (b) procure that the directors of the Target and each Subsidiary of the Target which the Bidder nominates resign from the board of each relevant entity and unconditionally and irrevocably release each relevant entity from any claims they might have against it.

4.6 Removal of the Target from the official list of ASX

Subject to the Scheme becoming Effective, the Target must take all steps necessary for the Target to be removed from the official list of ASX with effect from the close of business on the Business Day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date, and the Target and the Bidder (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

4.7 Court proceedings

- (a) Without limiting clause 4.2(k) above:
 - (i) the Bidder is entitled to separate representation at all Court proceedings relating to the Scheme (at its own cost); and
 - (ii) the Target must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by the Target or otherwise.
- (b) This agreement does not give either party any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.

5. Scheme Consideration

5.1 Obligations in respect of the Scheme Consideration

The Bidder agrees in favour of the Target (in the Target's own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to the Bidder of each Scheme Share under the Scheme, the Bidder will deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than the Business Day before the Implementation Date, and on the Implementation Date will:

- (a) accept that transfer and execute any instruments of transfer required to effect it; and
- (b) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder for Scheme Shares in accordance with the terms of this agreement and the Scheme.

5.2 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.2(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
 - (i) setting out their names and registered addresses as shown in the Target Share Register;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

5.3 CGT Withholding Amount

Notwithstanding any other provision of this agreement, if the Bidder determines (acting reasonably) that an amount is required to be withheld under Subdivision 14-D of Schedule 1 of the TAA from the Scheme Consideration payable to a Scheme Shareholder, the Bidder:

- (a) may withhold and remit to the Australian Taxation Office a sum equal to 12.5% (or some lesser rate expressly approved by the Commissioner of Taxation in writing) of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**); and
- (b) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this agreement and the Scheme,

provided that:

- (c) the Bidder has given the Target, at least 10 Business Days prior to the Implementation Date, information which is to the Target's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule 1 of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
- (d) the Target has not, at least 5 Business Days prior to the Implementation Date, given information to the Bidder which demonstrates (to the Target's satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.

6. Conduct of business

6.1 Conduct of the Target's business

- (a) From the date of this agreement up to and including the Implementation Date, the Target must procure that the business and operations of the Target Group are conducted:
- (i) in the ordinary course; and
 - (ii) substantially consistent with the manner in which the business and operations were conducted in the 12 month period prior to the date of this agreement (subject to all applicable laws, regulations and requirements of Regulatory Authorities), including:
 - A. using reasonable endeavours to preserve its current businesses, assets and business organisation, the services of its current directors, officers and employees and its current relationships with Regulatory Authorities, customers, suppliers, partners and others with whom it has business dealings;
 - B. not entering into any line of business or other activities in which the Target Group is not engaged as at the date of this agreement;
 - C. not undertaking a Target Prescribed Occurrence; and
 - D. conducting its business and operations substantially in accordance with all material applicable laws and regulations and sound industry practice.
- (b) From the date of this agreement up to and including the Implementation Date, the Target must not, and must procure that each other member of the Target Group does not:
- (i) acquire or lease, or agree, offer or propose to acquire or lease any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$500,000 (individually or in aggregate) other than as Disclosed on page 36 of document

05.08.11 in the Data Room and in the response to question 867 in the Data Room Q&A;

- (ii) dispose or agree, offer or propose to dispose of any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$500,000 (individually or in aggregate);
- (iii) acquire or dispose of, or enter into or announce any agreement for the acquisition or disposal of, any asset or business, or enter into any transaction, which would or would reasonably be likely to involve a material change in:
- A. manner in which the Target Group conducts its business;
 - B. the nature (including balance sheet classification), extent or value of the assets of the Target Group; or
 - C. the nature (including balance sheet classification), extent or value of the liabilities of the Target Group;
- (iv) commence business activities not already carried out as at the date of this agreement, whether by way of acquisition or otherwise;
- (v) enter into any contract or commitment restraining any member of the Target Group from competing with any person or conducting activities in any market;
- (vi) pay, discharge or satisfy any liability under a contract, arrangement or understanding to the Target Group of more than \$500,000 other than in accordance with its terms;
- (vii) commit to any capital expenditure in excess of \$500,000 (individually or in aggregate) other than as Disclosed on page 36 of document 05.08.11 in the Data Room;
- (viii) enter into a loan, advance or financing arrangement (other than with another member of the Target Group or to any client under a margin loan or similar facility in the ordinary course of business) as lender;
- (ix) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (x) appoint any new director to its board of directors, or vary any employment agreement with one or more of its officers, directors, other executives, or employees, or accelerate or otherwise increase remuneration, compensation or rights to benefits for any of the aforementioned, other than:
- A. in accordance with an existing contractual obligation to do so, provided that contractual obligation has been Disclosed in document 04.21 or document 04.22 in the Data Room;
 - B. in the ordinary course of business including variations resulting from annual pay reviews;
 - C. pursuant to an obligation under the Target Group's policies and guidelines in effect as at the date of this agreement (the

terms of which have been Disclosed in writing to the Bidder prior to the date of this agreement); or

D. as required by law or regulation,

provided all such increases do not exceed \$3 million in aggregate on an annualised basis;

- (xi) pay any of their respective officers, directors, other executives or employees a termination or retention payment, other than:
 - A. in accordance with contractual arrangements in effect on the date of this agreement and which are Disclosed in the Target Due Diligence Materials or referred to in the Target Disclosure Letter; or
 - B. those which have been Disclosed by the Target in the Target Disclosure Letter prior to the date of this agreement;
- (xii) amend the terms of the Target Long Term Incentive Plan;
- (xiii) do anything to cause or permit Intergeren ESS Limited to transfer or otherwise deal with any of the unallocated Target Shares it holds under the Legacy NZ ESS;
- (xiv) enter into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this agreement and which are contained in the Target Due Diligence Materials;
- (xv) amend, replace or make any other change to the constitution of any member of the Target Group;
- (xvi) enter into, or resolve to enter into, a transaction with a related party of the Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a member of the Target Group) as defined in section 228 of the Corporations Act;
- (xvii) incur any additional financial indebtedness, other than draw-downs of existing debt facilities or additional financial indebtedness incurred in the ordinary course of business;
- (xviii) guarantee or indemnify the obligations of any other person other than a member of the Target Group other than in the ordinary course of business;
- (xix) cease, or threaten to cease, to carry on a substantial part of its business;
- (xx) settle or compromise any new claim, litigation, investigation, arbitration or other like proceeding in relation to any member of the Target Group, or waive any material third party default, the value of which exceeds \$3 million (individually or in aggregate);
- (xxi) do or omit to do anything that would make any policy of insurance relating to a member of the Target Group void or voidable, or which might result in an increase in the premium payable under any insurance policy, or adversely affect a member of the Target Group's ability to procure equivalent insurance in the future;

- (xxii) change any accounting policy applied by the Target Group to report their financial position (other than any change in policy required by a change in accounting standards);
 - (xxiii) do anything that would result in a change to the composition of the Consolidated Group of which the Target is the head company or a change to the tax positions adopted by the Target Group prior to the date of this agreement (unless the change is required by law); or
 - (xxiv) authorise, agree, offer, commit or resolve to do any of the things referred to in clauses 6.1(b)(i) to 6.1(b)(xxiii), whether conditionally or otherwise.
- (c) Nothing in this clause restricts the ability of the Target or any member of the Target Group to take any action:
- (i) expressly permitted or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
 - (ii) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter in writing;
 - (iii) subject to any more specific disclosure references specified in any subclause of clause 6.1(b), that has been Disclosed by the Target prior to the date of this agreement; or
 - (iv) required by law or otherwise arising as a result of any court or Regulatory Authority order, injunction or undertaking.

6.2 Information obligations

- (a) Subject to clause 6.2(b), between the date of this agreement and the Implementation Date, the Target must:
- (i) keep the Bidder promptly informed of any material developments concerning the conduct of the Target Group's business, including after the end of each calendar month, promptly providing the Bidder with sufficient information for the Bidder to assess the Target Group's financial performance that month;
 - (ii) promptly after becoming aware of a matter material to the Transaction, provide the Bidder with sufficient information such that the Bidder can assess the nature and potential impact of that matter on the Transaction; and
 - (iii) without limiting clause 6.2(a)(i), the Target must promptly notify the Bidder of anything of which it becomes aware that makes any information in the Target Due Diligence Materials, the Target Disclosure Letter or that has been publicly filed by the Target (including in respect of any other member of the Target Group) incomplete, incorrect, untrue or misleading in any material respect.
- (b) The Target is not required to comply with clause 6.2(a) where the Target Board has determined in good faith and having considered written advice from external legal advisers that to undertake the relevant action would likely:
- (i) involve a breach of:
 - A. the fiduciary or statutory duties owed by any Target director;
 - or

- B. any legal obligations of the Target or any Target director; or
- (ii) otherwise be unlawful.
- (c) The Target and the Bidder acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Agreement.

6.3 Counterparty consents

- (a) The Target and the Bidder will cooperate with each other in good faith, and will use all reasonable endeavours, to seek to ensure that as soon as practicable after the date of this agreement the parties identify and obtain all counterparty consents or confirmations (as applicable), and provide any notifications, which are necessary or desirable in connection with the Scheme (including under the Change of Control Contracts and other consents, confirmations or notifications required under the relevant contract so as not to breach any change of control provisions in the relevant contract).
- (b) The Target must use reasonable endeavours to consult with the Bidder in connection with any notification or seeking any consent or confirmation under clause 6.3(a) and the Target must, to the extent reasonably practicable and unless restricted by law or the relevant contract:
 - (i) keep the Bidder reasonably informed of the progress of the notification, consent or confirmation under clause 6.3(a), including notifying the Bidder promptly following receipt of material communications from Third Parties in connection with clause 6.3(a), such notification to include confirmation of the effect of the communication;
 - (ii) give the Bidder a reasonable opportunity to review drafts of any material communications to Third Parties in connection with clause 6.3(a) and, acting reasonably and in good faith, take into account any reasonable comments provided by the Bidder on such drafts, provided that the form of consent must be irrevocable and must otherwise be approved by the Bidder, acting reasonably; and
 - (iii) inform the Bidder of any material correspondence otherwise provided to or received from a counterparty to any contract referred to in clause 6.3(a) with respect to termination, non-renewal (or renewal only on terms with material changes) or a material breach of a relevant contract.
- (c) The Bidder agrees to promptly provide any information reasonably requested by the relevant counterparties for the purpose of the Target obtaining any consents or confirmations under clause 6.3(a).

7. Integration

7.1 Access

Between (and including) the date of this agreement and the Implementation Date, the Target must, and must cause each other member of the Target Group to, afford to the Bidder and its Representatives reasonable access to information (subject to any existing confidentiality obligations owed to third parties) and such senior executives of any member of the Target Group as reasonably requested by the Bidder at mutually convenient times for the sole purposes of:

- (a) the implementation of the Scheme;

- (b) the Bidder obtaining a further understanding of the operations of the Target Group's business, financial position, prospects and affairs in order to allow and facilitate the development and implementation of the Bidder's plans for the carrying on of the businesses of the Target Group following implementation of the Scheme;
- (c) keeping the Bidder informed of material developments relating to the businesses of the Target Group; and
- (d) any other purpose agreed between the parties,

provided that:

- (e) nothing in this clause 7 will require the Target to provide, or procure the provision of, information concerning:
 - (i) the Target's directors' and management's consideration of the Scheme; or
 - (ii) any actual, proposed or potential Competing Proposal (including the Target's directors' and management's consideration of any actual, proposed or potential Competing Proposal),

but this proviso does not limit the Target's obligations under clause 10;

- (f) providing or procuring the provision of information or access to the Bidder or its Representatives pursuant to this clause 7 must not result in unreasonable disruptions to, or interference with, the Target Group's business;
- (g) the Bidder must:
 - (i) keep all information obtained by it as a result of this clause 7 confidential;
 - (ii) provide the Target with reasonable notice of any request for information or access; and
 - (iii) comply with the reasonable requirements of the Target in relation to any access granted;
- (h) nothing in this clause 7.1 gives the Bidder any rights to undertake further due diligence investigations, or any rights as to the decision making of any member of the Target Group or its business;
- (i) the Target may provide to the Bidder its records at a place other than the Target's business premises;
- (j) nothing in this clause 7.1 will require the Target to provide, or procure the provision of, information concerning the Target Group's business that is, in the reasonable opinion of the Target, commercially sensitive, including any specific pricing and margin information or customer details or otherwise; and
- (k) nothing in this clause 7.1 will require the Target to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
 - (i) breach any confidentiality obligation owed to a third party or under any applicable law; or
 - (ii) result in a waiver of legal professional privilege.

7.2 Existing finance and security

The Target must cooperate with, and undertake all actions reasonably required or requested by the Bidder in connection with any repayment of existing debt and financial indebtedness of the Target Group (including, for the avoidance of doubt, any financial indebtedness of the Target Group under the Facility Agreement dated 15 February 2018 between Westpac Banking Corporation, the Target, Intergen Limited and others, as amended (**Westpac Facility Agreement**)) and under any other financing arrangements entered into with Westpac New Zealand Limited) in connection with the Transaction, including:

- (a) liaising with the Bidder in good faith in relation to the use of the existing cash reserves of the Target Group or the Bidder Group for this purpose;
- (b) subject to the Scheme becoming Effective, issuing prepayment and other notices in relation to existing Target Group debt facilities and closing out any hedging positions in accordance with any timing requirements reasonably required by Bidder, and using reasonable endeavours to assist in the repayment or replacement of contingent instruments on issue in connection that existing debt; and
- (c) subject to the Scheme becoming Effective, using reasonable endeavours to procure deeds of release and discharges of real property mortgages and registrations on the PPS Register from secured parties with effect from the Implementation Date in relation to any Encumbrance and/or personal covenants granted by a member of the Target Group in favour of that party and to procure the return of any title documents held by a secured party.

8. Recommendation, intentions and announcements

8.1 Target Board Recommendation and Voting Intention

- (a) Subject to clauses 8.1(b) and 8.1(c), the Target must procure that each Target director:
 - (i) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
 - (ii) intends to cause any Target Shares in which he or she has a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Target Shareholders, and the Target must ensure that the Target Announcement, the Scheme Booklet and any public announcements by the Target in which a statement is made about the Scheme, include a statement to that effect.
- (b) The Target must procure that each Target director does not adversely change, withdraw, adversely modify or adversely qualify, or make a public statement that is inconsistent with, his or her Recommendation and Voting Intention unless:
 - (i) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders (or the Independent Expert changes or publicly withdraws its conclusion that the Scheme is in the best interests of Target Shareholders);
 - (ii) there is a Superior Proposal and the Target Board, after considering the matter in good faith and after taking advice from external legal advisers, determines that it no longer considers the Scheme to be in the best interests of Target Shareholders; or

- (iii) this agreement is validly terminated in accordance with its terms.
- (c) A Target director may change or withdraw his or her Recommendation (and if so changed, his or her Voting Intention), or not make a Recommendation, so as not to make any recommendation, if after first obtaining advice from independent counsel of the Western Australian bar, the Target director reasonably determines that:
- (i) he or she has an interest in the Scheme that renders it inappropriate for him or her to make or maintain any such Recommendation (**Scheme Interest**); and
 - (ii) the Court would not be likely to grant an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting and/or under section 411(4)(b) and 411(6) of the Corporations Act approving the Scheme, in each case solely as a result of the Scheme Interest.

8.2 Target Shares in Legacy NZ ESS

The Target must procure that Intergen ESS Limited exercises its discretion under the Legacy NZ ESS Trust Deed to vote the 195,194 unallocated Target Shares held by it under clause 6 of the Legacy NZ ESS Trust Deed favour of the resolution to approve the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Target Shareholders.

8.3 Confirmation

The Target represents and warrants to the Bidder that it has been advised by each Target director in office at the date of this agreement that he or she will make and maintain their Recommendation and Voting Intention unless permitted to change or withdraw it in accordance with this agreement.

9. Target Performance Rights

As at the Delivery Time, the Target must have put arrangements in place, and taken all action necessary, so that all Target Performance Rights will:

- (a) vest in accordance with their terms, be exercised (if applicable) and have resulted in the issue of such number of Target Shares as required by the terms of the Performance Rights so that the holders of Performance Rights can participate in the Scheme as Scheme Shareholders and receive the Scheme Consideration in respect of those Target Shares; or
 - (b) lapse or otherwise be cancelled or terminated,
- in each case before the Record Date.

10. Exclusivity arrangements

10.1 No existing discussions

The Target represents and warrants to the Bidder that, as at the date of this agreement, it and each of its Related Bodies Corporate and Representatives:

- (a) other than the discussions with the Bidder and its Representatives in respect of the Transaction, is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communications, in relation to a Competing Proposal, or which could reasonably be expected to lead to a Competing Proposal;

- (b) has ceased to provide or make available any non-public information in relation to the Target Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal, and must promptly request and enforce the immediate return and/or destruction of the Target's confidential information previously provided or made available to any Third Party in accordance with the terms of any applicable confidentiality agreement, and terminate their access to the Target Group's confidential information under that confidentiality agreement to the extent it has not already done so; and
- (c) has not, will not (and they must not) waive the provisions of any confidentiality or standstill agreement with any Third Party.

10.2 No shop

During the Exclusivity Period, the Target must not, and must ensure that its Related Bodies Corporate and Representatives do not, directly or indirectly, and except with the prior written consent of the Bidder, solicit, encourage, initiate or invite (including by the provision of non-public information to any Third Party) any Competing Proposal, expression of interest, offer, proposal, enquiries, negotiations, discussions or other communications with any Third Party, or communicate any intention to do any of these things, which may reasonably be expected to encourage or lead to an actual, proposed or potential Competing Proposal.

10.3 No talk and no due diligence

Subject to clause 10.4, during the Exclusivity Period, the Target must not, and must ensure that its Related Bodies Corporate and Representatives do not, except with the prior written consent of the Bidder, directly or indirectly:

- (a) enter into, facilitate, continue or participate in any negotiations, discussions or other communications with any Third Party in relation to any enquiry, expression of interest, offer, proposal or discussion by any person to make, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal;
- (b) disclose or otherwise provide or make available any non-public information about the business or affairs of the Target Group to a Third Party in connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the formulation, receipt or announcement of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group);
- (c) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal; or
- (d) communicate any intention to do any of the things listed in clauses 10.3(a), 10.3(b) or 10.3(c).

10.4 Limitation to no talk and no due diligence

The Target, its Related Bodies Corporate or its Representatives may undertake any action that would otherwise be prohibited by clause 10.3 in relation to an actual, potential or proposed Competing Proposal, where the Target Board has determined in good faith that:

- (a) after consultation with its advisers, such actual, proposed or potential Competing Proposal is a Superior Proposal or could reasonably be expected to become a Superior Proposal; and

- (b) after having considered written legal advice from external legal advisers, that not undertaking that act would likely involve a breach of the fiduciary or statutory duties owed by any Target director or otherwise be unlawful,

provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 10.2.

10.5 Notification of approaches

- (a) During the Exclusivity Period, the Target must notify the Bidder in writing as soon as possible (and in any event within 48 hours after becoming aware) if:
- (i) it (or any of its Related Bodies Corporate or Representatives) receives an approach or becomes aware of any:
 - A. negotiations, discussions or other communications;
 - B. attempts to initiate any negotiations, discussions or other communications; or
 - C. intention to make such an approach or attempt to initiate any negotiations, discussions or other communications,

by or with any person in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
 - (ii) the Target or any of its Related Bodies Corporate or Representatives provides any non-public information concerning the business or operations of the Target or the Target Group to any Third Party in connection with an actual, proposed or potential Competing Proposal.
- (b) A notification given under clause 10.5(a) must include all material terms and conditions of the actual, proposed or potential Competing Proposal (including price and form of consideration, conditions precedent, the identity of the bidder and timetable), in each case to the extent known by the Target or any of its Related Bodies Corporates or Representatives.
- (c) During the Exclusivity Period, the Target must also notify the Bidder in writing as soon as practicable after it or any of its Related Bodies Corporate or Representatives becomes aware of any material updates to the information previously provided to the Bidder pursuant to this clause 10.5, including that the relevant actual, proposed or potential Competing Proposal is no longer proceeding.

10.6 Matching right

- (a) During the Exclusivity Period, the Target:
- (i) must not, and must procure that each of its Related Bodies Corporate do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Target or any Related Body Corporate of the Target undertakes, proposes, or proposes to undertake or to give effect to an actual, proposed or potential Competing Proposal; and
 - (ii) must procure that none of the Target directors change their Recommendation, publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Transaction) or make any public statement to the effect that they may do so at a future point,

unless:

- (iii) the Target Board acting in good faith and in order to satisfy what the Target directors consider to be their statutory or fiduciary duties (having received written legal advice from its external legal advisers) determines that the Competing Proposal is, or would be or would be reasonably likely to be an actual, proposed or potential, Superior Proposal;
 - (iv) the Target has provided the Bidder with the material terms and conditions of the Competing Proposal (including price, form of consideration, conditions, timetable and details of the party making the proposal) (in each case, to the extent known);
 - (v) the Target has given the Bidder at least five French Business Days after the date of the provision of the information referred to in clause 10.6(a)(iv) above to provide a matching or superior proposal to the terms of the relevant Competing Proposal (**Bidder Counter Proposal**); and
 - (vi) the Bidder has not by the expiry of the time period in clause 10.6(a)(v) announced or otherwise provided a Bidder Counter Proposal.
- (b) If the Bidder provides to the Target or announces a Bidder Counter Proposal (which may constitute amendments to the Scheme or a new proposal) by the expiry of the five French Business Day period in clause 10.6(a)(v), the Target must use its best endeavours to procure that the Target directors promptly consider the Bidder Counter Proposal in good faith.
 - (c) If the Target directors determine, acting reasonably and in good faith, that the terms and conditions of the Bidder Counter Proposal (taken as a whole) are equivalent to or more favourable than those of the relevant Competing Proposal and would deliver an equivalent or superior outcome for Target Shareholders as a whole, the Target and the Bidder must each use all reasonable endeavours to negotiate and agree and enter into such documentation (including, if and as required, amendments to this agreement, the Scheme and the Deed Poll) as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable, and the Target must procure that each of its directors makes a public statement recommending the Bidder Counter Proposal to Target Shareholders.
 - (d) For the purposes of this clause 10.6, each successive material modification of any Competing Proposal or potential Competing Proposal will constitute a new Competing Proposal or potential Competing Proposal, and the procedures set out in this clause 10.6 must again be followed prior to any member of the Target Group entering into any agreement, arrangement, understanding or commitment in respect of such Competing Proposal or potential Competing Proposal.

10.7 Normal provision of information

Nothing in this clause 10 prevents the Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its auditors, consultants, customers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law; or
- (e) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

10.8 Legal advice

The Target acknowledges that it has received legal advice on this agreement and the operation of this clause 10 from reputable legal advisers experienced in transactions of this nature.

11. Reimbursement of Costs

11.1 Rationale and nature of payment

Each party acknowledges and agrees that:

- (a) it has required the inclusion of this clause 11 in the absence of which it would not have entered into this agreement or otherwise agreed to implement the Scheme, subject to the terms and conditions in this agreement;
- (b) it believes that the Scheme will provide significant benefits to it and its shareholders, and that it is reasonable and appropriate that the Target (in respect of the Target Payment) and the Bidder (in respect of the Bidder Payment) agree to the inclusion of this clause 11 in order to secure the other party's execution of this agreement and agreement to implement the Scheme, subject to the terms and conditions in this agreement;
- (c) it has received legal advice on the operation of this clause 11 from reputable legal advisers experienced in transactions of this nature;
- (d) the amount payable by the Target (in respect of the Target Payment) pursuant to clause 11.2 and by the Bidder (in respect of the Bidder Payment) pursuant to clause 11.3 is to be purely and strictly compensatory in nature so as to compensate the Bidder (in respect of the Target Payment) and the Target (in respect of the Bidder Payment) for the following:
 - (i) advisory costs relating to the Scheme;
 - (ii) costs of management and directors' time;
 - (iii) out-of-pocket expenses relating to the Scheme;
 - (iv) reasonable opportunity costs incurred by the Bidder or the Target (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which the Bidder or the Target (as applicable) could have developed to further its business and objectives; and
 - (v) damage to the Bidder's or the Target's (as applicable) reputation associated with a failed transaction and the implications of that damage to the Bidder's or the Target's (as applicable) business; and
- (e) the costs incurred by each party are of a nature that cannot be accurately quantified, and that a genuine pre-estimate of the costs to be incurred by each of the Target and the Bidder would equal or exceed the compensatory amount payable under clause 11.2 and clause 11.3, respectively.

11.2 The Target Payment

The Target agrees to pay the Target Payment to the Bidder without deduction, set-off or withholding if:

- (a) **(Competing Proposal)** a Competing Proposal is announced before the earlier of the Second Court Date and termination of this agreement, and within 12 months after the date of such announcement, the Third Party who announced the Competing Proposal (or any of its Associates) completes a Competing Proposal;
- (b) **(Change of recommendation)** during the Exclusivity Period, one or more of the Target directors fails to recommend the Scheme or adversely changes, adversely modifies, adversely qualifies or withdraws their support of the Scheme or their Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal, unless it occurs:
 - (i) after the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders (except where that conclusion is due to the existence, announcement or publication of a Competing Proposal);
 - (ii) after the Independent Expert changes or publicly withdraws its conclusion that the Scheme is in the best interests of Target Shareholders (except where that conclusion is due to the existence, announcement or publication of a Competing Proposal);
 - (iii) after the Target has become entitled to terminate this agreement pursuant to clause 15.3(b)(i) and has given the appropriate notice to the Bidder; or
 - (iv) pursuant to clause 8.1(c); or
- (c) **(Termination)** the Bidder terminates this agreement in accordance with:
 - (i) clause 15.2(b)(i); or
 - (ii) clause 15.2(b)(iv) due to a Target Prescribed Occurrence occurring, or being discovered, announced, disclosed or otherwise becoming known to the Bidder; or
- (d) **(Matching right)** there is a breach of clause 10.6 by the Target.

11.3 The Bidder Payment

The Bidder agrees to pay the Bidder Payment to the Target without deduction, set-off or withholding if:

- (a) at any time after the date of this agreement, the Target terminates this agreement in accordance with clause 15.3(b)(i); or
- (b) the Bidder does not pay or procure the payment of the Scheme Consideration in accordance with the terms and conditions of this agreement, the Scheme and the Deed Poll.

11.4 Timing of payment

- (a) A demand by a party for payment of the Target Payment under clause 11.2 or the Bidder Payment under clause 11.3 must:
 - (i) be in writing;

- (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of the Bidder or a Related Body Corporate into which the Target is to pay the Target Payment or the Target or a Related Body Corporate into which the Bidder is to pay the Bidder Payment (as applicable).
- (b) The Target must pay the Target Payment into the account nominated by the Bidder and the Bidder must pay the Bidder Payment into the account nominated by the Target (as applicable), without deduction, set-off or withholding, within 5 Business Days after receiving a valid demand for payment where the Bidder is entitled under clause 11.2 to the Target Payment or the Target is entitled under clause 11.3 to the Bidder Payment (as applicable).

11.5 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Payment or the Bidder Payment (as applicable) (**Impugned Amount**):
- (i) would, if paid, be unlawful for any reason;
 - (ii) involves a breach of the fiduciary or statutory duties of the Target Board; or
 - (iii) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,
- then
- (iv) the requirement to pay the Target Payment or the Bidder Payment (as applicable) does not apply to the extent of the Impugned Amount; and
 - (v) if the Bidder or the Target (as applicable) has received the Impugned Amount, it must refund it within 5 Business Days of the final determination.
- (b) The Target and the Bidder must not make, or cause to be made, any application to the Takeovers Panel or a court for or in relation to a determination referred to in this clause 11.5.

11.6 One payment only

- (a) Where the Target Payment becomes payable to the Bidder under clause 11.2 and is actually paid to the Bidder, the Bidder cannot make any claim against the Target for the payment of any subsequent Target Payment.
- (b) Where the Bidder Payment becomes payable to the Target under clause 11.3 and is actually paid to the Target, the Target cannot make any claim against the Bidder for the payment of any subsequent Bidder Payment.

11.7 No payment if Scheme Effective

Despite anything to the contrary in this agreement (including the occurrence of any event in clause 11.2 or clause 11.3), neither the Target Payment nor the Bidder Payment will be payable if the Scheme becomes Effective and if any amount has already been paid, it must be

refunded by the Bidder or the Target (as applicable) within 10 Business Days after the Scheme becomes Effective.

11.8 The Target's limitation of liability

- (a) Notwithstanding any other provision of this agreement, the maximum liability of the Target to all persons under or in connection with this agreement, including in respect of any breach of this agreement and the indemnity in clause 13.5, will be the amount of the Target Payment, except that this limitation of liability does not apply to any breach of clause 10 by the Target or any loss, liability or claims in relation to wilful breach of clause 10 by the Target.
- (b) A payment made by the Target in accordance with this clause 11 represents the sole and absolute liability of the Target and any member of the Target Group under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target under or in connection with this agreement, except that this limitation of liability does not apply to any loss, liability or claims in relation to wilful breach of clause 10 by the Target.
- (c) The amount of the Target Payment to be paid to the Bidder under this clause 11 will be reduced by the amount of any loss or damage recovered by the Bidder in relation to a breach of this agreement and the indemnity in clause 13.5.

11.9 The Bidder's limitation of liability

- (a) Notwithstanding any other provision of this agreement, the maximum liability of the Bidder to all persons under or in connection with this agreement, including in respect of any breach of this agreement and the indemnity in clause 13.2, will be the amount of the Bidder Payment.
- (b) A payment made by the Bidder in accordance with this clause 11 represents the sole and absolute liability of the Bidder and any member of the Bidder Group under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder under or in connection with this agreement.
- (c) The amount of the Bidder Payment to be paid to the Target under this clause 11 will be reduced by the amount of any loss or damage recovered by the Target in relation to a breach of this agreement and the indemnity in clause 13.2.

11.10 Survival

Any accrued obligations under this clause 11 survive termination of this agreement.

12. Liability of directors, officers and employees

12.1 Liability of directors, officers and employees

To the maximum extent permitted by law, each party releases all rights against, and agrees that it will not make any claim against, the other party's past or present Representatives in respect of any matter arising in connection with this agreement or the Transaction, including:

- (a) any breach of any representation or warranty;
- (b) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (c) any failure to provide information,

whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent arising from the fraud, dishonesty or wilful default of the relevant Representative.

12.2 Directors and officers insurance

The Bidder acknowledges and agrees that:

- (a) prior to the Implementation Date, the Target will arrange and pay all premiums required for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary on, so far as practicable, terms (including as to limits of liability and deductibles) no less favourable than under the Policy provided that the premiums for such Run Off Cover must not exceed \$600,000 in aggregate; and
- (b) the Run Off Cover will cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date.

12.3 Obligations in relation to directors and officers insurance

From the Implementation Date, the Bidder must procure that the Target does not:

- (a) vary or cancel the Policy or Run Off Cover; or
- (b) unless required under the Policy or Run Off Cover, commit any act or omission that may prejudice any claim by a Beneficiary under the Policy or Run Off Cover.

12.4 Directors and officers indemnities

Without limiting any other term of this agreement, the Bidder undertakes that it will, from the Implementation Date and in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a member of the Target Group (**Relevant Entity**) in favour of a director, officer or employee of any member of the Target Group, whether past or present, (**Indemnified Person**) from time to time procure that:

- (a) the Relevant Entity complies with the Relevant Deed; and
- (b) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from another member of the Target Group of good financial standing or from the Bidder (at the Indemnified Person's election) on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed as at the Implementation Date.

12.5 Compliance with law and benefit

- (a) Clause 12.1 and clause 12.4 are subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The Bidder acknowledges and agrees that the Target holds the benefit of this clause 12 to the extent it relates to each Target Indemnified Party as trustee for them, and, as such, each such Target Indemnified Party may enforce this clause 12 against the Bidder.
- (c) The Target acknowledges and agrees that the Bidder holds the benefit of this clause 12 to the extent it relates to each Bidder Indemnified Party as trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 12 against the Target.

13. Representations, warranties and indemnities

13.1 Representations and warranties by the Bidder

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this agreement;
- (b) as at the date the Scheme Booklet is despatched to the Target Shareholders; and
- (c) as at 5:00 pm on the Business Day prior to the Second Court Date,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

13.2 The Bidder indemnity

- (a) The Bidder acknowledges and agrees that in entering into this agreement the Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Subject to clause 11.9, the Bidder indemnifies the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any claim, action, damage, loss, liability, cost, expense or payment that the Target or any of the other Target Indemnified Parties suffers, incurs or is liable for by reason of any breach of any of the Bidder Warranties.

13.3 Qualification of the Bidder Warranties and the indemnity

The Bidder Warranties and the indemnity under clause 13.2 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Bidder under the Transaction Documents; or
- (b) were fairly disclosed to the Target in writing prior to the date of this agreement.

13.4 Representations and warranties by the Target

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

- (a) the Target Scheme Warranties is true and correct in all material respects:
 - (i) as at the date of this agreement;
 - (ii) as at the date the Scheme Booklet is despatched to the Target Shareholders; and
 - (iii) as at 5:00 pm on the Business Day prior to the Second Court date; and
- (b) the Target Business Warranties is true and correct in all material respects as at the W&I Policy Inception Date,

unless:

- (c) subject to clause 13.4(d), the relevant Target Warranty is expressed to be given only at a particular time, in which case it is given as at that time,

and provided that:

- (d) if the Bidder does not take out a W&I Policy or fails to satisfy in full the conditions precedent in the W&I Policy (including payment in full of all premiums and other charges), then the Target does not represent and warrant that each of the Target Business Warranties is true and correct and clause 13.4(b), clause 13.5(c), clause 13.8, clause 13.9(a)(iii) (to the extent that it relates to the Target Business Warranties), clause 13.9(a)(iv) (to the extent that it relates to the Target Business Warranties) and Schedule 3 will be of no force and effect.

13.5 Target indemnity

- (a) Subject to clause 13.4(d) and clause 13.9, the Target acknowledges and agrees that in entering into this agreement the Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Subject to clause 11.8, the Target indemnifies the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any claim, action, damage, loss, liability, cost, expense or payment that the Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for by reason of any breach of any of the Target Scheme Warranties.
- (c) Subject to clause 13.4(d) and clause 13.9, on and from the W&I Policy Inception Date, the Target indemnifies the Bidder against any claim, action, damage, loss, liability, cost, expense or payment that the Bidder suffers, incurs or is liable for by reason of any breach of any of the Target Business Warranties.

13.6 No double recovery

The Bidder Indemnified Parties are not entitled to recover or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one loss, liability, damage, cost, charge or expense under or in connection with this agreement.

13.7 Qualification of the Target Warranties and the indemnities

The Target Warranties, the Target Tax Indemnity and the indemnities under clause 13.5 are subject to any facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Target under the Transaction Documents;
- (b) were within the actual knowledge of the Bidder as at the date of this agreement; or
- (c) have been Disclosed by the Target prior to the date of this agreement,

and the Target is not liable in respect of any claim arising out of a breach of any Target Warranty or under the Target Tax Indemnity or the indemnities under clause 13.5 in connection with or arising from any facts, matters, circumstances or acts which fall within any of clauses 13.7(a), 13.7(b) or 13.7(c).

13.8 Target Tax Indemnity

Subject to clauses 13.4(d) and 13.9, the Target indemnifies the Bidder against, and must pay the Bidder on demand the amount of, any losses, liabilities, damages, costs, charges or expenses that the Bidder suffers, incurs or is liable for which is attributable to any:

- (a) Tax payable by a member of the Target Group (whether payable before, on or after implementation of the Scheme) as a result of a Tax Demand to the extent that such Tax relates to:

- (i) any period, or part period, up to and including implementation of the Scheme; or
 - (ii) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme,
- excluding any Duty payable by the Bidder under clause 19.10;
- (b) Tax payable by a member of the Target Group to the extent that the Tax would not have occurred but for a breach of a Target Warranty;
 - (c) loss or limitation, including any reduction in the rate of use, of any tax attributes of the Target Group at the implementation of the Scheme; or
 - (d) Tax Costs incurred by or on behalf of a member of the Target Group to the extent that such Tax Costs arise from or relate to any of the matters for which the Target is liable under clauses 13.8(a), 13.8(b) or 13.8(c),

in each case except to the extent that the Target's liability is limited or qualified under this agreement.

13.9 W&I Policy and limitations on claims in connection with a Target Business Warranty or Target Insured Indemnity

Notwithstanding any provision to the contrary in this agreement:

- (a) the Bidder:
 - (i) agrees that neither it nor any Bidder Indemnified Party:
 - A. will proceed or will have any claim, remedy or right to proceed, whether at law or in equity; and
 - B. will be entitled to make, and the Bidder must ensure that none of them will make, and irrevocably waives any right any of them may have to make, any claim or seek any remedy,

against any Target Indemnified Party for breach of a Target Business Warranty or under a Target Insured Indemnity; and
 - (ii) irrevocably waives and releases each Target Indemnified Party to the maximum extent permitted by law from any liability in relation to the Target Insured Indemnity and any claim, action, damage, loss, liability, cost, expense or payment that the Bidder Indemnified Party suffers, incurs or is liable for by reason of any breach of any of the Target Business Warranties,

except:

 - (iii) where the Target, another member of the Target Group or a Target Indemnified Party has engaged in fraud; or
 - (iv) to the extent required to permit a claim under the W&I Policy (if any), and then only on the basis that the Target and each Target Indemnified Party will have no liability whatsoever for such claim beyond \$1.00,

and in each case only if clause 13.4(d) does not apply and the Target Business Warranty and the Target Insured Indemnity are valid and effective;

- (b) the Bidder covenants in favour of the Target that, subject to the Bidder taking out a W&I Policy, the Bidder will:
- (i) not do anything that causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;
 - (ii) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy;
 - (iii) pay in full when due all premiums, costs, charges, duties or other amounts payable under or in connection with the W&I Policy;
 - (iv) comply with the terms of the W&I Policy relating to deliverables required to satisfy conditions in the W&I Policy to the extent that non-compliance would prejudice the rights of the Target Indemnified Parties as set out in this agreement; and
 - (v) where requested to do so by a Target Indemnified Party, it will at its own cost enforce any term of the W&I Policy under which the insurer waives its right to take subrogated action or to claim in contribution or to exercise rights assigned to it against a Target Indemnified Party (and without limitation of any right of a Target Indemnified Party to separately enforce such terms);
- (c) the Bidder must ensure that any W&I Policy at all times includes terms to the effect that:
- (i) the insurer irrevocably waives its rights to bring any claim against any Target Indemnified Party by way of subrogation, claim for contribution or otherwise (including by assignment);
 - (ii) the insurer acknowledges and agrees that:
 - A. each Target Indemnified Party is entitled to directly enforce such waivers and may plead such waiver in bar to any subrogated action, claim in contribution or exercise of assigned rights or otherwise which may be brought against them in any jurisdiction; and
 - B. in respect of the waivers, the Bidder contracts in its own right and as an agent of each Target Indemnified Party;
- (d) the Bidder acknowledges and agrees that:
- (i) there is no excess, premium or any other amount payable by any member of the Target Group or a Target Indemnified Party under the W&I Policy (if any);
 - (ii) clause 13.9(a) applies regardless of whether or not:
 - A. it takes out a W&I Policy; or
 - B. any W&I Policy that the Bidder does take out lapses, is or becomes void or is voided or cancelled or does not respond to or otherwise apply to cover any claim for breach of a Target Business Warranty or under a Target Insured Indemnity; or
 - C. a Bidder Indemnified Party is or may be unable for any reason to pursue or obtain any remedy under any insurance policy, including the W&I Policy (whether due to any policy

exceptions or exclusions, the validity of the policy including, without limitation, if the W&I Policy is invalid due to the insolvency, breach or default of any person, the creditworthiness of any person or otherwise);

- (iii) if the Bidder proposes to take out a W&I Policy, it must provide a copy of the policy documents to the Target a reasonable period of time, and not less than 2 Business Days, before taking out the W&I Policy; and
- (iv) in the event it takes out a W&I Policy, it will promptly provide the Target with a copy of all policy documents (including the policy schedule, the policy wording, and any endorsements) issued by the insurer;
- (e) the Bidder indemnifies each Target Indemnified Party against any claim, action, damage, loss, liability, cost, expense or payment that a Target Indemnified Party suffers, incurs or is liable for by reason of or in connection with any breach by the Bidder of this clause 13.9; and
- (f) the Target acknowledges and agrees that:
 - (i) the Bidder is under no obligation to take out a W&I Policy;
 - (ii) if the Bidder takes out a W&I Policy and provides a copy of the policy documents to it, it shall keep the terms of such W&I Policy confidential in accordance with the Confidentiality Agreement; and
 - (iii) it will cooperate with the Bidder and provide, at the Bidder's cost, all reasonable assistance requested by the Bidder which is reasonably necessary for the purpose of the underwriting and the purchase of a W&I Policy. The Target is only required to provide further documents (in addition to the Data Room provided before and up to the date of this agreement) or answer further questions (in addition to the Data Room Q&A and requests for information made before and up to the date of this agreement) to the extent reasonably necessary for the purpose of underwriting a W&I Policy.

13.10 Notifications

- (a) Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 13 or will or may give rise to a claim under the Target Tax Indemnity or the indemnities under clause 13.5, or that might otherwise make any representation or warranty given by it under this clause 13 false, inaccurate, misleading or deceptive in any material respect.
- (b) The Target is not liable in respect of a breach of any of the representations or warranties given by it under this clause 13 or for a claim under the Target Tax Indemnity or the indemnity under clause 13.5(b) or 13.5(c) unless the Target receives notice under clause 13.10(a) no later than:
 - (i) 7 years after the Implementation Date in respect of a breach of any of the Tax Warranties, a breach of any of the Target Scheme Warranties set out in paragraphs (a) to (f) (inclusive) and paragraph (o) of Schedule 2 (together, **Title and Capacity Warranties**), for a claim under the indemnity under clause 13.5(b) in respect of any of the Title and Capacity Warranties, or for a claim under the Target Tax Indemnity; and
 - (ii) 3 years after the Implementation Date in respect of a breach of any of the other Target Warranties, for a claim under the indemnity under clause 13.5(b) in respect of any of the Target Scheme Warranties other

than the Title and Capacity Warranties, or for a claim under the indemnity under clause 13.5(c).

13.11 Status of representations and warranties

Each representation and warranty in this clause 13:

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

13.12 Status and enforcement of indemnities

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

13.13 Necessary tense changes

For the purposes of clauses 13.1 and 13.4, the Bidder Warranties and the Target Warranties shall be read with any necessary adjustments to the tense used in the relevant warranty.

14. Confidentiality and public announcements

14.1 Confidentiality Agreement

The Target and the Bidder acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this agreement in respect of all information received by it from the other party on, before or after the date of this agreement and that the terms of this agreement will prevail over the terms of the Confidentiality Agreement to the extent of any inconsistency.

14.2 Survival of obligations

The rights and obligations of the Target and the Bidder in relation to confidential information under the Confidentiality Agreement survive termination of this agreement.

14.3 Disclosure on termination of agreement

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

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

14.4 Public announcements

- (a) Immediately after execution of this agreement, the Target must issue the Target Announcement to ASX.

- (b) Immediately after execution of this agreement, the Bidder must issue the Bidder Announcement.
- (c) Where a party proposes or is required to make any subsequent public announcement or disclosure in connection with the Transaction or the Scheme, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and consider in good faith any such comments from the other party.

15. Termination and remedies

15.1 Limited termination events

This agreement may only be terminated by either party in the circumstances contemplated by clauses 15.2 and 15.3, or if the Target and the Bidder agree in writing to terminate this agreement.

15.2 Termination by the Bidder

The Bidder may terminate this agreement at any time before the Delivery Time:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to the Target if:
 - (i) the Target is in material breach of any clause of this agreement other than clause 8.1 (including in relation to the Target Scheme Warranties but not any Target Business Warranty or Target Insured Indemnity (in relation to which the Bidder has no right to terminate this agreement)) (and, for the avoidance of doubt, any breach of clause 9 shall be deemed a material breach for the purposes of this clause) and:
 - A. the Bidder has given written notice to the Target setting out the relevant circumstances and stating an intention to terminate this agreement; and
 - B. the relevant circumstances are not remedied and have continued to exist for five Business Days from the time such notice is received by the Target (or any shorter period ending at the Delivery Time); or
 - (ii) any of the Target directors:
 - A. withdraws, fails to make or adversely changes, adversely modifies or adversely qualifies their support for the Scheme or their Recommendation or Voting Intention; or
 - B. publicly recommends, supports or endorses a Competing Proposal,

for any reason other than pursuant to clause 8.1(c);
 - (iii) if the Target enters into any legally binding agreement, arrangement or understanding in relation to undertaking or giving effect to any actual, proposed or potential Competing Proposal; or

- (iv) a Target Prescribed Occurrence occurs or is discovered, announced, disclosed or otherwise becomes known to the Bidder (whether the event occurred before or after the date of this agreement).

15.3 Termination by the Target

The Target may terminate this agreement at any time before the Delivery Time:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to the Bidder if:
 - (i) the Bidder is in material breach of any clause of this agreement and:
 - A. the Target has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate this agreement; and
 - B. the relevant circumstances are not remedied and have continued to exist for five Business Days from the time such notice is received by the Bidder (or any shorter period ending at the Delivery Time); or
 - (ii) a majority of the Target directors publicly withdraw, fail to make or adversely change their Recommendation or Voting Intention or publicly recommend a Competing Proposal, as permitted under clause 8.1 and, if required to do so under clause 11, the Target pays the Target Payment to the Bidder.

15.4 Effect of termination

If this agreement is terminated the provisions of this agreement (and all further obligations and liabilities of the parties under this agreement) shall cease to have effect except for the provisions of (and obligations set out in) this clause and clauses 1, 11, 12, 14, 15.5 and 16 to 18 (inclusive), 19.1 to 19.5 (inclusive), 19.7 to 19.11 (inclusive) and 20 which will survive termination.

15.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or demand payment of the Target Payment or the Bidder Payment (as the case may be).

16. GST

16.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or Goods and Services Tax 1985 (NZ) (in each case, as amended from time to time) as the context requires.
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.

- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 16.4(a) in relation to that supply.

16.2 GST exclusive

- (a) Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.
- (b) The parties acknowledge that no GST should be payable on the supply of the Target Shares under this agreement.

16.3 Reimbursements and similar payments

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

16.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 16.4(a) is required until the Supplier has provided a valid tax invoice, including by specifying the GST exclusive price and specifying the amount of GST payable in relation to a taxable supply to which the tax invoice relates, to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 16.4(a), and/or the supply made does not qualify as a taxable supply for any reason, then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 16.4(c) is deemed to be a payment, credit or refund of the additional amount payable under clause 16.4(a).
- (d) Clauses 16.4(a) to 16.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

17. Notices

17.1 How notice to be given

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

- (a) must be given to a party:
- (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and

- (ii) using the address or other details for the party set out in the below table (or as otherwise notified by that party to each other party from time to time under this clause 17):

Party name	Attention	Address (for hand delivery or delivery by courier or post)	Email address
Bidder	General Counsel office	Level 7, 77 King Street Sydney, NSW 2000 Australia	teresa.alan@capgemini.com
<i>with a copy to</i>	Group General Counsel office	Capgemini Service 11, rue de Tilsitt 75017 Paris France	maria.pernas@capgemini.com isabelle.riviere@capgemini.com walter.vejdovsky@capgemini.com
	Group M&A		
	Tony Damian / Nicole Pedler	Herbert Smith Freehills Level 33, ANZ Tower 161 Castlereagh Street Sydney, NSW 2000 Australia	Tony.Damian@hsf.com Nicole.Pedler@hsf.com
Target	David Hinton	Level 7, The Quadrant, 1 William Street, Perth, WA 6000	david.hinton@empired.com
<i>with a copy to</i>	Mark Paganin / Stephen Neale	Clayton Utz Level 27, QV.1 250 St Georges Terrace Perth WA 6000	mpaganin@claytonutz.com sneale@claytonutz.com

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

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

17.2 When notice taken to be received

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

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;

- (d) (in the case of email, whether or not containing attachments) the earlier of:
- (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered;
 - (ii) receipt by the sender of an automated message confirming delivery; and
 - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing),

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
 - (i) the recipient is absent from the place at which the communication is delivered or sent;
 - (ii) the communication is returned unclaimed; and
 - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and
- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5:00 pm, it is taken to be received at 9:00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

17.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 17 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 17.2.

18. Entire agreement

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

19. General

19.1 Amendments

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

19.2 Assignment

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

19.3 Consents

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

19.4 Costs

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

19.5 Counterparts

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

19.6 Further acts and documents

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

19.7 No merger

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

19.8 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.

19.9 Severance

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

19.10 Stamp duties

The Bidder:

- (a) must pay or procure the payment of all Duty in respect of this agreement, the performance of this agreement and each transaction effected by or made under or in connection with this agreement; and

- (b) indemnifies the Target against, and must pay to the Target on demand the amount of, any loss or liability suffered or incurred by the Target arising out of or in connection with any delay or failure to comply with clause 19.10(a).

19.11 Waivers

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

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

20. Governing law and jurisdiction

20.1 Governing law

This agreement is governed by the law applying in Western Australia.

20.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 20.2(a).

Schedule 1 - The Bidder Warranties

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

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
- (i) the constitution or equivalent constituent documents of the Bidder or any of its Related Bodies Corporate; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder is party, or by which the Bidder is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for it to execute and perform the Transaction Documents to which it is party;
- (f) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
- (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Target and the Target Indemnified Parties have relied, and will continue to rely, on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
 - (ii) the Bidder Information complies in all material respects with, and contains all information regarding the Bidder, the Bidder Group and the Scheme Consideration required by, all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of the Target, or has been extracted from announcements made by the Target to ASX regarding the Target Group) 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;
 - (iv) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;
 - (v) the Bidder has complied, and will continue to comply, with its obligations under clause 4.2(i); and
 - (vi) all information provided by or on behalf of the Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the

Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;

- (g) **(Bidder)** the Bidder is a wholly-owned Subsidiary of Bidder Parent;
- (h) **(Reasonable basis for sufficient cash)** as at the date of this agreement, it has a reasonable basis to expect that it will, by the Business Day prior to the Second Court Date, have sufficient cash on its balance sheet, or unconditional financial commitments available to it, to perform its obligations in respect of the Scheme, if the Scheme becomes Effective;
- (i) **(Sufficient cash)** the Bidder will have sufficient cash on its balance sheet, or unconditional financial commitments available to it, on both the Second Court Date and the Implementation Date to perform its obligations in respect of the Scheme, if the Scheme becomes Effective;
- (j) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder; and
- (k) **(Other relationships)** neither the Bidder nor any of its Associates:
- (i) has a Relevant Interest in any Target Shares; or
 - (ii) is a party to any agreement, arrangement or understanding involving the conferring of rights on it, the economic effect of which is equivalent, substantially equivalent, or similar to, it acquiring, holding or disposing of Target Shares (whether combined with a financing arrangement or not).

Schedule 2 - The Target Scheme Warranties

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

- (a) **(Validly existing)** each member of the Target Group is a company properly incorporated and validly existing under the laws of its relevant place of incorporation;
- (b) **(Authority)** the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
- (i) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for the Target to execute and perform the Transaction Documents to which it is a party;
- (f) **(Capital structure)** as at the date of this agreement, there are:
- (i) 160,301,595 Target Shares on issue;
 - (ii) 8,383,834 Target Performance Rights on issue,
- and the Target has not issued any other securities, options, instruments or rights which may convert into Target Shares which are still outstanding, and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any securities, options, instruments or rights in the Target other than as set out in this paragraph (f);
- (g) **(Target Due Diligence Materials)** it has collated and prepared all of the Target Due Diligence Materials in good faith for the purposes of a due diligence process (but which process does not include due diligence on information of commercial or competitive sensitivity or information that is legally privileged) and in this context, as far as the Target is aware:
- (i) the Target Due Diligence Materials have been collated with all reasonable care and skill;
 - (ii) the information contained in the Target Due Diligence Materials is accurate in all material respects;
 - (iii) the Target Due Diligence Materials do not include information that is misleading in any material respect; and
 - (iv) no information has been omitted from the Target Due Diligence Materials that, in the Target's reasonable opinion, would render the Target Due Diligence Materials

misleading in any material respect or, if disclosed, be material to a reasonable buyer's evaluation of the Target Group or decision whether to proceed with the Transaction;

- (h) **(Interest)**
- (i) the Target Due Diligence Materials set out full details of any company or entity (wherever incorporated) in which any member of the Target Group holds any interest, being only those companies whose details are included in the Agreed Form "Target Group Structure List";
 - (ii) the Target Group is comprised solely of the companies detailed in the Agreed Form "Target Group Structure List" and each company listed in the Agreed Form "Target Group Structure List", other than the Target, is legally and beneficially wholly owned, directly or indirectly, by the Target;
 - (iii) Empired Singapore Pte. Ltd. (UEN 201510548K) (**Empired Singapore**) has discontinued all operations and been wound up, and the Target Group has no actual, potential, current or contingent liabilities or obligations of any kind with respect to or in connection with Empired Singapore; and
 - (iv) no member of the Target Group holds any interest in any partnership, trust, joint venture (whether incorporated or unincorporated) or other enterprise;
- (i) **(Material Contracts)** as far as the Target is aware as at the date of this agreement, (i) no member of the Target Group is in material default under a Material Contract to which it is a party, and (ii) nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any Material Contract;
- (j) **(No anticipated termination of Material Contracts)** as at the date of this agreement, as far as the Target is aware, no member of the Target Group has any basis to believe or expect that another party to a Material Contract or any Change of Control Contract intends to terminate (whether pursuant to a right to terminate for convenience or upon a change of control) or not renew that contract or otherwise only renew that contract on revised terms with material changes;
- (k) **(Encumbrances)** other than any Permitted Security Interest, as far as the Target is aware, on the Implementation Date there will be no security interest over all or any of the Target Group's present or future assets or revenues;
- (l) **(Target Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
- (i) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
 - (ii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (iii) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to the Bidder by or on behalf of the Target or has been extracted from announcements made by the Target to ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;

- (iv) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
- (v) all information provided by or on behalf of the Target to the Independent Expert is or will be accurate, not misleading or deceptive in any material respect (whether by omission or otherwise) and has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
- (m) **(Disclosure)** the Target is in compliance with all of the disclosure requirements under the Listing Rules, including its continuous disclosure obligations under Listing Rule 3.1 and, as at the date of this agreement, following the making by the Target of the Target Announcement to ASX pursuant to clause 14.4(a), will not be withholding any information pursuant to Listing Rule 3.1A;
- (n) **(Specific compliance)** as far as the Target is aware:
- (i) each member of the Target Group, in the 5 year period to the date of this agreement, has complied in all material respects with all laws and regulations relating to privacy and data protection, labour and employment, anti-money laundering, anti-bribery and anti-corruption in jurisdictions in which the Target Group operates (**Relevant Laws**);
- (ii) the Target has not received notice of any actual or alleged material breach of any Relevant Laws by any member of the Target Group; and
- (iii) the Target Group has effective controls in place to prevent, detect and deter violations of Relevant Laws;
- (o) **(Insolvency)** no Insolvency Event has occurred in relation to the Target or any other member of the Target Group;
- (p) **(Compliance)** no member of the Target Group has breached in any material respect any Australian or foreign laws or regulations applicable to them and each member of the Target Group has complied with all orders of Australian and foreign Regulatory Authorities having jurisdiction over them, and there is no judgment, injunction, order or decree binding on any member of the Target Group that constitutes or would be likely to constitute a Target Material Adverse Change;
- (q) **(Material licences)** as far as the Target is aware, the Target Group has all material licences, authorisations and permits necessary for it to conduct the business of the Target Group as it is being conducted as at the date of this agreement, and no member of the Target Group:
- (i) is in material breach of, or default under, any such licence, authorisation or permit; or
- (ii) has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, authorisation or permit;
- (r) **(No litigation)** as far as the Target is aware:
- (i) no material litigation, prosecution, arbitration, mediation, action or other legal or administrative proceedings relating to any member of the Target Group is current, pending or threatened or might reasonably be expected to arise as a result of current circumstances;
- (ii) no member of the Target Group is the specific focus of any material formal investigation by a Regulatory Authority (not being an industry-wide investigation); and

- (iii) none of the foregoing might reasonably be expected to arise as a result of current circumstances;
- (s) **(Not Indirect Australian Real Property Interests)** as at the date of this agreement, none of the Target Shares held by persons who could be Scheme Shareholders are indirect Australian real property interests within the meaning of section 855-25 of the Income Tax Assessment Act 1997 (Cth); and
- (t) **(Financial statements)** there has not been any event, change, effect or development that would require the Target to restate the Target's financial statements as disclosed to ASX, and Target's financial statements for the financial year ended 30 June 2020 and the half year ended 31 December 2020:
- (i) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, the accounting standards and all other applicable laws and regulations; and
 - (ii) give a true and fair view of the financial position and the assets and liabilities of the Target Group.

Schedule 3 – The Target Business Warranties

1. Target Group

(Incorporation and registration) Each member of the Target Group:

- (i) is duly incorporated under the laws of the place of its incorporation;
- (ii) has the power to own its assets and carry on its business as it is being carried on at the date of this agreement and on the Implementation Date;
- (iii) is duly registered and authorised to do business in those jurisdictions that, by the nature of its business and assets, makes registration or authorisation necessary; and
- (iv) has conducted its business in compliance with its constitution or other constituent documents.

2. Accounts and records

(a) **(Financial statements):**

- (i) the Target's consolidated financial statements for the financial year ended 30 June 2020, the half year ended 31 December 2020 and, once finalised, the financial year ended 30 June 2021; and
 - (ii) Intergen Limited's consolidated financial statements for the financial year ended 30 June 2020,
- are:
- (iii) not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise); and
 - (iv) not affected by unusual, abnormal or non-recurring items, other than those items specifically disclosed in those financial statements.

(b) **(Management Accounts)** The Management Accounts (having regard to the purpose for which they were prepared):

- (i) fairly represent and show a materially accurate view of:
 - A. the financial position and state of affairs of the Target Group as at the date to which they have been prepared; and
 - B. the financial performance of the Target Group for the period in respect of which they have been prepared;
- (ii) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise); and
- (iii) have been prepared in good faith and with due care and diligence and in a manner consistent with that adopted in the preparation of the management accounts for the equivalent period ended 12 months prior to the date of the Management Accounts.

(c) **(Conduct of business)** Since 30 June 2020:

- (i) the Target Group has conducted its business and operations:

- A. in the ordinary and usual course;
- B. in accordance with legal and contractual obligations in all material respects; and
- C. in a manner generally consistent (subject to any applicable laws, regulations and regulatory approvals) with the manner in which each of its businesses and operations had been conducted in the 12 month period prior to 30 June 2020, subject to any changes to its businesses and operations in response to the Coronavirus or COVID-19 pandemic;
- (ii) no member of the Target Group has:
- A. paid, discharged or satisfied any liability under a contract, arrangement or understanding of more than \$500,000 other than in accordance with its terms;
- B. incurred any financial indebtedness, other than draw-downs of existing debt facilities or additional financial indebtedness incurred in the ordinary course of business;
- C. settled or compromised any claim, litigation, investigation, arbitration or other like proceeding in relation to any member of the Target Group, or waived any material third party default, the value of which exceeds \$1 million (individually or in aggregate); or
- D. done anything that would result in a change to composition of the Consolidated Group of which the Target is the head company or a change to the tax positions adopted by the Target Group prior to 30 June 2020 (unless the change is required by law);
- (iii) no contracts or commitments differing from those ordinarily made in the conduct of the business have been entered into or incurred;
- (iv) no customer that is party to a Material Contract has ceased or substantially reduced its trade with the Target Group or has altered the terms of trade to the material disadvantage of the Target Group; and
- (v) all related party arrangements between each Target Shareholder and the Target Group and between each Target Indemnified Party and the Target Group have been Disclosed.
- (d) **(Accounting records)** As far as the Target is aware, the books of account of the Target Group (including any which it may be obliged to produce under any contract now in force) are up to date, in the position of the relevant member of the Target Group and are true and complete in accordance with the law and applicable standards, principles and practices generally accepted in Australia and New Zealand.
- (e) **(Other records)** The Target's Group records (including all certificates of registration, minute books, statutory books and registers, title deeds and other documents of title) are in the possession or control of the Target Group and, as far as the Target is aware, have been properly kept, maintained and completed and do not contain or reflect material inaccuracies or discrepancies.
- (f) **(Filings)** Each material document or filing which is required by law to be delivered or made by the Target Group to any Regulatory Authority has been duly delivered or made.
- (g) **(Registers)** No member of the Target Group has received notice of any application or intended application for the rectification of its register of members or any other register that it is required by law to maintain.

3. Material agreements and other arrangements

- (a) **(Material agreement disclosure)** All contracts, agreements and arrangements in existence as at the date of this agreement that could reasonably be considered material to the Target Group **(Material Agreements)** have been Disclosed.
- (b) **(Binding agreements)** Each Material Agreement is valid, binding and enforceable upon and against each member of the Target Group that is a party to that agreement and, so far as the Target is aware, each other party to that agreement.
- (c) **(No breach)** No member of the Target Group has received or given any notice in respect of any actual, alleged or potential breach of any Material Agreement, nor (so far as the Target is aware) are there any facts, matters or circumstances which may result in such a notice being given.
- (d) **(No termination)** As at the date of this agreement, no party to any Material Agreement has given any notice terminating or intending to terminate any Material Agreement, nor (so far as the Target is aware as at the date of this agreement) are there any facts, matters or circumstances which may result in such a notice being given.
- (e) **(No material default)** No member of the Target Group is in material default under any Material Agreement binding on it or its assets nor has anything occurred which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event or give another party a termination right or right to accelerate any right or obligation under any such document.
- (f) **(No non-renewal)** No member of the Target Group has received any notice, advice or correspondence from a counterparty to a Material Agreement:
- (i) with respect to the non-renewal or non-extension of the term of that Material Agreement; or
 - (ii) confirming or suggesting that that Material Agreement will be renewed or extended only on materially amended terms.
- (g) **(No other arrangements)** No member of the Target Group is a party to any material agreement or arrangement that:
- (i) is not on arm's length terms;
 - (ii) was not entered into in the ordinary course of business; or
 - (iii) other than as Disclosed, contains a non-compete undertaking or exclusivity restriction.
- (h) **(Third party relationships)** No member of the Target Group has been notified in writing by any third party that such third party intends to cease or alter the nature of its commercial or business dealings with the Target Group, where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole).

4. Financing arrangements

The Target has not, as at the date of this agreement and at any time during the preceding 12 month period before the date of this agreement, received any written notice or notification as to any material existing or unremedied default, event of default, cancellation event, review event, or similar event under the Westpac Facility Agreement or any financing arrangements between a member the Target Group and Westpac New Zealand Limited.

5. Assets

- (a) All of the material tangible assets of the Target Group are:
- (i) the absolute property of a member of the Target Group free and clear of all Encumbrances (other than any Permitted Security Interests);
 - (ii) except as Disclosed in the Target Due Diligence Materials, not the subject of a Security Interest which has been perfected by the secured party possessing or controlling the personal property;
 - (iii) not the subject of any lease or hire purchase agreement or agreement for purchase on deferred terms;
 - (iv) in the exclusive possession or under the control of a member of the Target Group, its agent or nominee; and
 - (v) not the subject of any agreements or arrangements to dispose or not dispose or that otherwise restrict their use or disposal.
- (b) The Target Group owns, or has the right to use, all of the assets that are material for the carrying on of the businesses and operations of the Target Group as such businesses and operations are currently carried on.
- (c) As far as the Target is aware, all material assets owned and used by the Target Group in the conduct of its business and operations:
- (i) are recorded in the books of a member of the Target Group;
 - (ii) are in good repair, condition and working order for their age;
 - (iii) are operational and fit for performing the function for which they are intended to be used;
 - (iv) have been regularly and properly serviced throughout their life; and
 - (v) comply with all applicable laws and standards in all material respects and have not been repaired or modified in a way which would adversely impact a warranty provided by a supplier of those assets.

6. Intellectual Property Rights

- (a) A member of the Target Group is the sole legal and beneficial owner of, registered proprietor of or applicant in respect of the Intellectual Property Rights and name registrations set out in the Agreed Form "List of Publicly Registered Business Intellectual Property" free and clear of all Encumbrances and a member of the Target Group has the right to use all other Intellectual Property Rights material for carrying on the businesses and operations of the Target Group as such businesses and operations are currently carried on (collectively, the **Business Intellectual Property**).
- (b) As far as the Target is aware, no person is infringing any Business Intellectual Property.
- (c) As far as the Target is aware, no person other than a member of the Target Group, or a customer of the Target Group under an agreement entered into in the ordinary course of business, has any right to use, or any interest in or may benefit from any Business Intellectual Property.
- (d) The Business Intellectual Property, together with Intellectual Property Rights in software licensed to the Target Group members under commercial arrangements from third parties, are

all the Intellectual Property Rights required for and used in the conduct of the businesses and operations of the Target Group as such businesses and operations are currently carried on.

- (e) All employment, service or consultancy agreements to which a member of the Target Group is a party stipulate that any Intellectual Property Rights developed by the counterparty during the tenure of their employment or consultancy with the Target Group, is the property of a member of the Target Group.
- (f) As far as the Target is aware, the conduct of the businesses and operations of the Target Group as such businesses and operations are currently carried on, and the use of the Business Intellectual Property, does not breach or infringe any Intellectual Property Rights, rights of confidentiality, moral rights or any other rights of any third party.
- (g) As far as the Target is aware, no oppositions, cancellation actions, proceedings, claims or complaints have been brought or threatened by any third party or any governmental agency in relation to the Business Intellectual Property.

7. Information Technology, data and privacy

- (a) All data, records and information technology and telecommunications systems, hardware and software owned or used by the Target Group (collectively, the **Systems** and provided that a reference to any System includes any separate part of that System) are either owned by or validly licensed to, a member of the Target Group.
- (b) So far as the Target is aware, no action is necessary (other than renewal of standard support arrangements) to enable the Systems to continue to be used in connection with the businesses and operations of the Target Group to the same extent and in the same manner as they have been used before the date of this agreement.
- (c) In the 12 months before the date of this agreement there have been no defects in, outages, failures, breakdowns or substandard performance of, any Systems to the extent that this has had a material impact on the business operations of the Target Group.
- (d) The Target Group applies commercially available and up-to-date security measures, including third party security tools, designed to prevent unauthorised access or damage to the Systems or destruction or corruption of data stored on or processed by the Systems.
- (e) So far as the Target is aware, there has been no unauthorised access to the Systems or any of the data or information stored on them and no security incidents or other vulnerabilities have been identified through the security measures referred to in paragraph (d).
- (f) Where the Target Group uses open source software, there is no requirement under any licence or other terms of use relevant to the open source software which necessitates the disclosure or licensing of any proprietary software owned or used by the Target Group or any materials relevant to that proprietary software.
- (g) The Target Group has all required rights to use, copy, modify, communicate, disclose, store (including in any server) and otherwise deal with any data it holds, including on behalf of customers, sufficient to enable the Target Group to use, handle, disclose, store (including any server) that data in the way that data is being or has been used, handled, disclosed and stored by or on behalf of the Target Group in the conduct of its business or operations.
- (h) As far as the Target is aware, there are no facts, matters or circumstances that, in relation to Personal Information which is collected, held, used or disclosed in connection with the business or operations of the Target Group (**Business Personal Information**) could reasonably be expected to give rise to Business Personal Information being the subject of any unauthorised access (including hacking, ransomware and other similar events), use, disclosure or loss, whether involving any officer, employee or contractor of the Target Group, or any other person, in the last five years.

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- (i) As far as the Target is aware, within the five years preceding the date of this document: (i) there have been no material security breaches relating to, or material violations regarding, or unauthorised access, use, processing or disclosure of any Personal Information or sensitive data held or stored by a member of the Target Group; (ii) there have been no material cyber security incidents; and (iii) the Target Group has complied in all material respects with applicable data protection and privacy laws.
- (j) The Target Group has not notified any government agency or regulator (including any overseas regulator), of any security incidents (including any incidents of unauthorised access or disclosure) or data breaches in relation to Business Personal Information within the last five years.

8. Litigation

Other than the matters Disclosed, there are no:

- (i) existing claims, litigation or other dispute resolution proceedings involving any member of the Target Group;
- (ii) regulatory actions, complaints, investigations or notifications involving any member of the Target Group in the last three years; or
- (iii) judgments, awards or settlements of legal proceedings which have had or are continuing to have an impact on the business of any member of the Target Group,

(together, **Material Proceedings**) and, as far as the Target is aware, no Material Proceedings against any member of the Target Group are pending or threatened and the Target is not aware of any dispute, event or circumstance that will, or would reasonably be likely to, give rise to any Material Proceedings.

9. Compliance and authorisations

- (a) No member of the Target Group has received any notice alleging that it is in breach of any applicable law or regulation has been made against a member of the Target Group in connection with its business and operations.
- (b) Each Target Group member:
 - (i) holds, and the Target Due Diligence Materials contain copies of, all authorisations, consents, agreements, certificates, licences, permissions, approvals, permits or declarations or exemptions from, by or with a Regulatory Authority necessary for the use of the Properties and for the conduct of its business and operations as they are carried on at the date of this agreement (each an **Authorisation**);
 - (ii) has complied with all terms, conditions and other provisions of or applicable to the Authorisations;
 - (iii) has not done or permitted to be done anything that would, or would be reasonably likely to, cause or result in the termination of any of the Authorisations; and
 - (iv) has not received any notice that any Authorisation will be revoked, suspended, modified, subjected to new conditions or will not be renewed.
- (c) So far as the Target is aware there is no fact or matter (including entry into the Transaction Documents, implementation of the Scheme and the transactions contemplated by any Transaction Document) which might prejudice the continuance or renewal, or result in the revocation, termination or variation in any material respect, of any Authorisation.
- (d) The Target Group:

- (i) has complied with all applicable export controls laws;
- (ii) is not engaged in any covered exports, re-exports, or transfers (in-country) within the meaning of the *Export Administration Regulations* (15 C.F.R. §§ 730 et seq.); and
- (iii) has no products and/or services that are classified on the Commerce Control List (15 C.F.R. Supplement No. 1 to Part 774) maintained by the Bureau of Industry and Security of the US Department of Commerce.

10. Employees and contractors

- (a) The Target Due Diligence Materials Disclose accurate details of the commencement date, position title, employing entity, salaries and wages, participation (if any) in an applicable incentive arrangement, applicable allowances, applicable enterprise agreement (including unregistered agreements) (if any), applicable collective employment agreement (if any), modern awards coverage (if any), and accrued long service leave, annual leave, leave loading, personal / sick / carers leave or alternative holidays / days in lieu for each Target Employee as at the relevant dates specified in such disclosure.
- (b) At the date of this agreement, no member of the Target Executive Team:
 - (i) has given notice of termination of their employment with the relevant member of the Target Group;
 - (ii) will be entitled to terminate their employment as a result of the execution and performance of this agreement; or
 - (iii) has been placed on garden leave or any equivalent arrangement.
- (c) So far as the Target is aware, no Target Employee requires a visa under applicable Australian or New Zealand immigration laws to lawfully work in Australia or New Zealand.
- (d) No member of the Target Group is involved in bargaining for a proposed enterprise agreement (or any other industrial instrument or collective employment agreement) with any Target Employees, nor have they received a demand from any Target Employees (or any union) to negotiate or bargain for an enterprise agreement (or any other industrial instrument or collective employment agreement).
- (e) No member of the Target Group has given a commitment (whether legally binding or otherwise) to increase or supplement the wages, salaries, incentives, annual leave and leave loading, long service leave, personal / carer's / sick leave, alternative holidays / days in lieu or any other remuneration, compensation, gratuities or benefits of any Target Employee beyond the amounts and entitlements specified in the Target Due Diligence Materials or as otherwise required pursuant to future confirmed amendments to the *Holidays Act 2003* (NZ).
- (f) Each member of the Target Group complies in all material respects with its obligations under any law relating to Target Employees (including employment and industrial laws, anti-discrimination laws, and work health and safety laws) and any applicable collective employment agreements, industrial agreements and modern awards, and with all codes of conduct and practice relevant to conditions of service and to any contracts and other employment agreements that govern the relations between it and Target Employees employed by it. This warranty also applies to any former employees of the Target Group whose employment has terminated over the previous 6 years.
- (g) Each member of the Target Group has kept adequate records regarding the service of the Target Employees and as far as the Target is aware:
 - (i) in respect of each member of the Target Group incorporated in Australia, such records meet the record keeping obligations under the *Fair Work Act 2009* (Cth) or

the *Fair Work Regulations 2009* (Cth) (if any) and record keeping obligations under any applicable law, enterprise agreement or modern award; and

- (ii) in respect of each member of the Target Group incorporated in New Zealand, such records meet the record keeping obligations under the *Employment Relations Act 2000* (NZ), or the *Holidays Act 2003* (NZ), and any record keeping obligations under any applicable law (including any laws relating to tax, KiwiSaver and superannuation), employment agreement or policy.
- (h) No member of the Target Group is a party to any collective employment agreement, collective bargaining agreement, workplace agreement or other contract with a trade union or industrial organisation, labour union, labour organisation, works council, group of employees or individual employees in respect of the Target Employees and their employment and no industrial awards, collective employment agreements, collective bargaining agreements or workplace agreements apply to any Target Employees other than as Disclosed in the Target Due Diligence Materials.
- (i) No member of the Target Group has been involved in any labour or industrial dispute with any union or industrial organisation, labour organisation, works council, group of employees or Target Employee at any time within the three years preceding the date of this agreement.
- (j) There is no actual, current, pending or (so far as the Target is aware) threatened claim, demand, legal proceedings or cause of action by a Target Employee, any former employees of the Target Group, any current or former contractor to the Target Group, any current or former employees of any contractor to the Target Group, or any Regulatory Authority, against any member of the Target Group in relation to the Target Group's compliance with obligations under any law relating to employees (including employment and industrial laws, anti-discrimination laws, and work health and safety laws) and, so far as the Target is aware, there are no facts, matters or circumstance which may give rise to any such claim, demand, charge, complaint, audit, investigation, legal proceeding or cause of action against any member of the Target Group.
- (k) The Target Due Diligence Materials details of all material current and unresolved claims (including legal proceedings) made against a member of the Target Group by current Target Employees or past employees of the Target Group prior to the date of this agreement.
- (l) As at the date of this agreement, no member of the Target Group has made any offer of work to, or any appointment of, a new individual (or any company controlled by an individual as a senior executive, or as an independent contractor) for a term of 12 months or more or for payment of \$200,000 or more per annum that remains capable of acceptance.
- (m) All agreements and terms and conditions of employment with the Target Executive Team have been Disclosed in full in the Target Due Diligence Materials.
- (n) No Target Employee is, or may become, entitled to any bonus, compensation, payment or other benefit:
- (i) in connection with this agreement or the transactions contemplated hereby; or
 - (ii) which is triggered by a change of control of the Target, or by the termination or cessation of that Target Employee's employment with the relevant member of the Target Group.
- (o) Each member of the Target Group is not under, nor will it assume after the date of this agreement, any liability to any Target Employee for any pension or lump sum retiring allowance.
- (p) Other than as Disclosed in the Target Due Diligence Materials, no member of the Target Group operates or has adopted, or has resolved or agreed to operate or adopt, any incentive plan in which Target Employees participate or may participate.

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- (q) Details of all material current and unresolved incidents, investigations or claims relating to health and safety issues which have occurred, been made or carried out before the date of this agreement and which affect or could reasonably affect any member of the Target Group or any Target Employees (or former employees of the Target Group) have, as far as the Target is aware, been Disclosed in the Target Due Diligence Materials.
- (r) Other than as Disclosed in the Target Due Diligence Materials, no member of the Target Group:
- (i) has been subject to a Work Safety Authority inspection, investigation or prosecution in the last three years;
 - (ii) has at any time received an improvement notice, compliance notice, prohibition notice, penalty or fine from a Work Safety Authority or other Regulatory Authority in respect of any breach or alleged breach of workplace health and safety laws or standards; or
 - (iii) is currently subject to any threatened investigation, improvement notice, compliance notice, prohibition notice or prosecution by a Work Safety Authority and, so far as the Target is aware, no facts, matters or circumstances exist which may give rise to any such investigation, improvement notice, compliance notice, prohibition notice or prosecution.
- (s) For the purposes of warranty (r), a **Work Safety Authority** means a Regulatory Authority with responsibility for the investigation and/or enforcement of work health and safety legislation, amongst other functions.
- (t) Each member of the Target Group incorporated in Australia:
- (i) has workers compensation insurance in place, and has paid its workers compensation insurance up to date; and
 - (ii) is not the subject of any current workers compensation claim (other than Disclosed in the Target Due Diligence Materials) and the Target is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and details of all material workers compensation claims during the last three years have been Disclosed in the Target Due Diligence Materials.
- (u) Each member of the Target Group incorporated in New Zealand:
- (i) has complied with all obligations applicable under New Zealand's accident compensation scheme, including paying all relevant levies and maintaining all records required under same; and
 - (ii) is not the subject of any claim relating to accident compensation (other than as Disclosed in the Target Due Diligence Materials) and the Target is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and details of all material claims relating to accident compensation during the last three years have been Disclosed in the Target Due Diligence Materials.
- (v) Each member of the Target Group has complied in all material respects with all applicable legislation (including any laws relating to Tax and superannuation) and any agreement binding on it, in respect of any persons currently or formerly engaged by the Target or member of the Target Group as an independent contractor and, so far as the Target is aware, neither the Target nor any member of the Target Group are in breach of any agreement, arrangement or understanding with any person currently or formerly engaged as an independent contractor.
- (w) So far as the Target is aware, no independent contractor engaged by a member of the Target Group (nor any of the personnel of an independent contractor) is or was an employee of any member of the Target Group (or is or was entitled to be treated as one) at law whilst engaged

as a contractor (or engaged or employed as the personnel of an independent contractor) by the Target Group.

- (x) There is no existing or, so far as the Target is aware, threatened, pending or anticipated investigation by any Regulatory Authority, or any current or former independent contractor (or any of the personnel of an independent contractor), against any member of the Target Group in relation to an allegation that an independent contractor (or any of the personnel of an independent contractor) was not properly characterised as such.
- (y) In relation to the Legacy NZ ESS:
- (i) all of the 195,194 Target Shares held by Intergen ESS Limited under clause 6 of the Legacy NZ ESS Trust Deed are unallocated shares which are not being held by Intergen ESS Limited for any eligible employee under the Legacy NZ ESS;
 - (ii) other than the Target Shares referred to in paragraph 10(y)(i), Intergen ESS Limited does not hold any other Target Shares under the Legacy NZ ESS; and
 - (iii) there are no outstanding loans owed by any current or former participating employees to the Target Group in connection with their participation in the Legacy NZ ESS.

11. Superannuation

- (a) All members of the Target Group have complied with their obligations to make superannuation or pension contributions under any industrial instrument, contract or the governing rules of any fund, and there are no overdue contributions due on the part of any member of the Target Group or any Target Employee that are outstanding and unpaid.
- (b) The prescribed minimum level of superannuation support has been provided by each member of the Target Group so as not to incur a superannuation guarantee charge prescribed by the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- (c) As far as the Target is aware, no member of the Target Group contributes to any defined benefit fund in respect of the Target Employees and no member of the Target Group is liable to contribute in respect of any defined benefit fund.

12. Insurance

- (a) In respect of the insurances effected in respect of the Target Group, the insurances provide usual insurance coverage for the business activities undertaken by the Target Group.
- (b) The Target Due Diligence Materials Disclose reasonable particulars of all current insurance policies taken out in respect of the Target Group (or a member thereof) or their businesses or operations (**Insurances**).
- (c) Each Insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment.
- (d) So far as the Target is aware, nothing has been done or omitted to be done that would make any Insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim under any Insurance or otherwise alter the terms of the policy.
- (e) As at the date of this agreement:
 - (i) there are no outstanding claims made by a member of the Target Group or any person on its behalf under any Insurance;

- (ii) so far as the Target is aware, there are no threatened or pending claims under any Insurance.
- (f) The members of the Target Group have notified insurers of all material claims, facts, matters and circumstances as required by the notification provisions under each Insurance.
- (g) Each member of the Target Group has in place all insurances required by law or contract to be taken out by it, subject to excesses and deductibles.

13. Properties

- (a) The Target Due Diligence Materials include copies of all agreements or other documents (including any side deeds or car park licences) pursuant to which a member of the Target Group leases, sub-leases, licences, occupies or otherwise uses any parcel (whether in whole or in part) of real property (all such agreements and other documents, the **Property Leases**, and all such parcels of real property, the **Leased Properties**), and the copies of such Property Leases included in the Target Due Diligence Materials are current, accurate and complete (and include any and all variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Property Leases).
- (b) The Leased Properties comprise all the land and premises used or occupied by the Target Group as at the date of this agreement and the Target Group does not have any interest in, is not party to, and is under no obligation to enter into, any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of, any real property or premises other than the Leased Properties in the operation of the Target Group's business and activities.
- (c) The Leased Properties and the buildings and other improvements on the Leased Properties are suitable for use in the ordinary course of the Target Group's business and operations as they are conducted as at the date of this agreement.
- (d) The Target Group does not own any freehold property and is not under any obligation to acquire any freehold property.
- (e) Each Property Lease constitutes the entire agreement between a member of the Target Group and the relevant Landlord and is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered or otherwise the subject of, or capable of being the subject of, a registered caveat.
- (f) None of the Leased Properties is subject to any sublease, licence, tenancy or right of occupation in favour of any person other than a member of the Target Group.
- (g) Neither the Target Group nor any member of the Target Group has received any notice of, nor is the Target aware of, any facts, matter or circumstances:
 - (i) to vacate in respect of any of the Leased Properties;
 - (ii) except as Disclosed in the Target Due Diligence Materials in relation to the Leased Property known as Level 12, 9 Hunter Street, Sydney NSW 2000 Australia, in respect of the compulsory acquisition or resumption of any of the Leased Properties (or any part thereof);
 - (iii) in respect of any contemplated, pending or threatened condemnation or change to the planning, zoning or other ordinances in respect of any of the Leased Properties;
 - (iv) in respect of any actual, alleged or potential breach of any Property Lease or the termination or intended termination of any Property Lease for any reason;
 - (v) in respect of any actual or potential contamination, presence of substances, or other environmental matter in relation to a Leased Property;

- (vi) in respect of any damage to or destruction of a Leased Property (or part thereof), or any other event, which would give either the Target Group or a Landlord a right to terminate a Property Lease;
- (vii) in respect of any dispute, claim, demand, legal proceeding or actions relating to any of the Leased Properties or the use thereof; and
- (viii) in respect of any intention on the part of any counterparty to a Property Lease to:
- A. terminate the Property Lease; or
 - B. seek to increase the rent, fees, rates or other amounts payable by the relevant member of the Target Group under the Property Lease other than as permitted under that Property Lease.
- (h) As far as the Target is aware, there is no notice, enforcement, order, direction, requisition, declaration, report, recommendation or approved proposal of a Regulatory Authority or adjoining owners or occupiers issued or threatened which would materially affect any of the Leased Properties or the use thereof.
- (i) There are no current material disputes under or in respect of any of the Leased Properties and as far as the Target is aware no party to a Property Lease has knowingly waived any breach of covenant, obligation or restriction under the Property Lease.
- (j) No member of the Target Group is overdue in the payment of rent, fees, rates and other amounts payable by them in respect of the Leased Properties (including under the Property Leases).
- (k) There are no make good, or material maintenance or works or capital expenditure obligations under any Property Lease that should have been performed by a member of the Target Group on or before the date of this agreement which have not been performed.
- (l) In respect of all securities required under each Property Lease:
- (i) these have been provided to each of the Landlords; and
 - (ii) none have been called on or if any securities have been called on, each has been topped up or a replacement provided as required under the relevant Property Lease.

14. Tax

- (a) Each member of the Target Group has duly and properly made all Tax registrations required of it under Tax Law and, as far as the Target is aware, complied with all obligations imposed on it by any Tax Law or as requested by any Regulatory Authority.
- (b) All notices and elections required to be given or made by a member of the Target Group have been given or made by the member of the Target Group and support the positions taken in the returns.
- (c) No Tax audit or dispute is pending, anticipated or threatened in respect of a member of the Target Group.
- (d) As far as the Target is aware, any obligation on a member of the Target Group to withhold an amount at source has been complied with.
- (e) Each member of the Target Group has kept and maintained proper and adequate records for at least the minimum retention period required under Tax Law to enable it to comply in all material respects with its obligations to:

- (i) prepare and submit any information, notices, computations, returns and payments required in respect of any Tax Law, including, but not limited to, the tax costs base of its assets and liabilities immediately following implementation of the Scheme;
- (ii) prepare any accounts necessary for compliance with any Tax Law;
- (iii) support any position taken by a member of the Target Group; and
- (iv) retain necessary records as required by any Tax Law.
- (f) Each member of the Target Group has submitted any necessary information, notices, computations and returns to the relevant Regulatory Authority in respect of any Tax relating to the Target Group.
- (g) So far as the Target is aware, any information, notice, computation and return that has been submitted by the member of the Target Group to a Regulatory Authority in respect of any Tax:
- (i) is true, accurate and complete;
- (ii) discloses all material facts that are required to be disclosed under any Tax Law;
- (iii) is not misleading in any material particular; and
- (iv) has been submitted on time, or materially on time, with the relevant Regulatory Authority.
- (h) As far as the Target is aware, no member of the Target Group has entered into or been a party to any transaction or scheme designed partly or wholly or containing steps or stages designed partly or wholly under which a tax benefit or deferral has been obtained that is subject to the anti-avoidance provisions of any Tax Law.
- (i) Nothing has occurred to cause a disallowance or reduction of carried forward income or capital losses or tax attributes of a member of the Target Group as at implementation of the Scheme (other than the transfer of the Scheme Shares as contemplated by this agreement).
- (j) Each member of the Target Group has complied with all transfer pricing requirements in all jurisdictions in which such member of the Target Group conducts business, including not obtaining a "transfer pricing benefit" as that term is defined in Division 815 of the *Income Tax Assessment Act 1997* (Cth).
- (k) All documents and transactions entered into by a member of the Target Group that are required to be stamped and on which the member of the Target Group was liable to pay duty have been duly stamped.
- (l) All documents required to be created by a member of the Target Group under a law relating to duty have been created and have had duty paid in full in accordance with all applicable laws.
- (m) No member of the Target Group has in the last 3 years been a party to any transaction where an asset was transferred to a Related Body Corporate and relief from duty was obtained.
- (n) The share capital account of each member of the Target Group is not "tainted" within the meaning of section 995-1 of the *Income Tax Assessment Act 1997* (Cth).
- (o) No member of the Target Group has a permanent establishment outside its respective jurisdiction of incorporation and the members of the Target Group are and have been resident for Tax purposes solely in their respective jurisdiction of incorporation.
- (p) No member of the Target Group has sought capital gains tax relief under sub-division 126B of the *Income Tax Assessment Act 1997* (Cth) or section 160ZZO of the *Income Tax Assessment*

Act 1936 (Cth) in respect of any asset acquired by it and that is still owned by it immediately after implementation of the Scheme.

- (q) All R&D tax offsets claimed by the Target prior to implementation of the Scheme have been correctly calculated and validly claimed.
- (r) All associated R&D registrations have been duly obtained and kept in force up to implementation of the Scheme.
- (s) The experimental activities which are the subject of the R&D tax offsets claimed by the Target prior to implementation of the Scheme were undertaken for the purpose of generating new knowledge and the outcome was unknown.
- (t) With the exception of OBS Pty Ltd, none of the members of the Target Group have been a member of a Consolidated Group other than the Consolidated Group of which the Target is the head company.
- (u) None of the assets which are owned by members of the Target Group is the subject of any encumbrance in favour of any Regulatory Authority.
- (v) Each member of the Target Group has complied in all material respects with all laws, contracts, agreements and arrangements binding on it relating to GST.
- (w) Each Target Entity:
- (i) is registered for GST under the GST Law where required to be registered for GST;
 - (ii) has adequate systems established for it to ensure it complies with the GST Law; and
 - (iii) has not been a member of GST Group other than the GST Group of which the Target is the representative member.
- (x) As far as the Target is aware, the Legacy NZ ESS continues to be an exempt ESS under section CW 26C of the Income Tax Act as a scheme which had the New Zealand Commissioner of Inland Revenue's approval under section DC 12 of the Income Tax Act prior to that section's repeal by the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018.
- (y) Intergen Limited and Intergen ESS Limited have correctly maintained all tax memorandum accounts that they are required to maintain, or have elected to maintain, in accordance with the Income Tax Act and none of those tax memorandum accounts will have a credit or debit balance on the Implementation Date which gives rise to a Tax liability or loss of or delay in any refund of Tax otherwise payable to a member of the Target Group.

15. Accuracy of information

- (a) The Target has not knowingly withheld any information from the Bidder because the Target believed that the provision of that information could affect the Bidder's willingness to proceed in the purchase of the Scheme Shares on the terms of this agreement.
- (b) The Target Due Diligence Materials have been collated and prepared in good faith, and the Target is not aware of any information contained in the Target Due Diligence Materials that is false or misleading in any material respect (including by omission) as at the date of collation or preparation.
- (c) The Target has not intentionally withheld from the Target Due Diligence Materials any information which would reasonably be expected to be material to a reasonable and sophisticated buyer's evaluation of the Target Group, including details of all material liabilities of the Target Group and the aggregate amount of all fees, costs and expenses which the

Target or any other member of the Target Group has paid or agreed to pay, or may become liable to pay, in connection with the Transaction.

- (d) The Target has provided (and Disclosed) complete and accurate information in relation to the Transaction Costs, any Competing Proposals as at the date of this agreement and any other transaction where such retainer or mandate is current, or under which the Target Group still has obligations.
- (e) The historical and factual information contained in Target Due Diligence Materials is accurate and complete in all material respects and all forecasts, budgets, projections or similar forward looking materials contained in the Target Due Diligence Materials are genuine operational documents of the Target Group.
- (f) All forecasts and projections in respect of the Target Group and its businesses and operations given by or on behalf of the Target or its advisers to the Bidder or its advisers are, in the opinion of the Target (acting reasonably), reasonable and have been prepared with due care and on a reasonable basis.

Schedule 4 - Timetable

Event	Date
First Court Date	Late September 2021
Scheme Meeting	Late October 2021
Second Court Date	Early November 2021
Effective Date	Early November 2021
Record Date	Early November 2021
Implementation Date	Mid November 2021

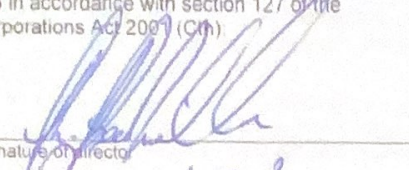
For personal use only

Signed as an agreement.

Executed by **Empired Limited ACN 090 503 843** in accordance with section 127 of the Corporations Act 2001 (Cth).

Signature of director

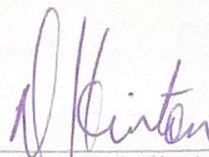
Full name of director



Russell Baskerville

Signature of company secretary/director

Full name of company secretary/director



DAVID HINTON

Executed by **Capgemini Australia Pty Limited ACN 092 284 314** in accordance with section 127 of the Corporations Act 2001 (Cth).

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

For personal use only

Signed as an agreement.

Executed by **Empired Limited ACN 090 503 843** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by **Capgemini Australia Pty Limited ACN 092 284 314** in accordance with section 127 of the Corporations Act 2001 (Cth):


DocuSigned by:

5AFC9F8D56794AB...

Signature of director

Kaylene O'Brien

Full name of director

DocuSigned by:

0AB3A7FBD636475...

Signature of company secretary/director

Olaf Pietschner

Full name of company secretary/director

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Annexure A - Scheme

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Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Empired Limited

Target

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz
Level 27 QV.1
250 St Georges Terrace
Perth WA 6000
GPO Box 9806
Perth WA 6848
Tel +61 8 9426 8000
Fax +61 8 9481 3095
www.claytonutz.com

Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation.....	3
1.3	Business Day.....	4
2.	Conditions precedent	4
2.1	Conditions	4
2.2	Certificates in relation to Conditions	4
2.3	Termination of Implementation Agreement	5
3.	Scheme	5
3.1	Effective Date of this Scheme	5
3.2	End Date	5
4.	Implementation of Scheme	5
4.1	Lodgement of Court Orders with ASIC	5
4.2	Transfer of Scheme Shares.....	5
4.3	Provision of Scheme Consideration	6
4.4	Joint holders	6
4.5	Unclaimed monies	6
4.6	Orders of a court or Regulatory Authority.....	7
4.7	Fractional entitlements and share splitting or division.....	7
5.	Dealings in Target Shares	8
5.1	Dealings in Target Shares by the Scheme Shareholders	8
5.2	Target Share Register	8
5.3	Information to be made available to the Bidder.....	8
5.4	Effect of share certificates and holding statements.....	8
5.5	No disposals after Record Date.....	8
6.	Suspension and termination of quotation	9
7.	General Scheme provisions	9
7.1	Appointment of agent and attorney	9
7.2	Enforcement of Deed Poll.....	9
7.3	Scheme Shareholders' consent.....	9
7.4	Scheme Shareholder's agreements and warranties.....	9
7.5	Title to Scheme Shares and transfer free from encumbrance	10
7.6	Appointment of the Bidder as sole proxy.....	10
7.7	Consent to alterations.....	10
7.8	Notices	11
7.9	Inconsistencies	11
7.10	Further assurance.....	11
7.11	No liability when acting in good faith	11
7.12	Stamp duties.....	11
7.13	Governing law and jurisdiction.....	11

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

Date

Parties **Empired Limited ACN 090 503 843** of Level 7, the Quadrant, 1 William Street Perth WA 6000 (**Target**)

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Background

- A. The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.
- B. If this Scheme becomes Effective, the Bidder will acquire all of the Scheme Shares and the Target will enter the Bidder in the Target Share Register as the holder of the Scheme Shares.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the contrary intention appears or the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder means Capgemini Australia Pty Limited ACN 092 284 314.

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

CHESS means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlement Pty Limited ABN 49 008 504 532.

Condition means each condition to this Scheme set out in clause 2.1.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Federal Court of Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

Deed Poll means the deed poll dated [*insert*] 2021 executed by the Bidder in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

Delivery Time means 8:00 am on the Second Court Date.

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

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

End Date means the date that is 6 months after the date of the Implementation Agreement or such other date agreed in writing between the Target and the Bidder.

Implementation Agreement means the Scheme Implementation Agreement dated 19 July 2021 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

Listing Rules means the official listing rules of ASX.

Record Date means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

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

Regulatory Authority means any foreign or Australian:

- (a) government, department, minister or agency of any government and any other governmental, semi-governmental, administrative, fiscal, monetary or judicial body, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government; and
- (b) other authority, agency, tribunal, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to in writing by the Target and the Bidder.

Scheme Consideration means the amount of cash which a Scheme Shareholder is entitled to receive under this Scheme, being \$1.35 for each Scheme Share, subject to adjustment in accordance with clause 4.7.

Scheme Meeting means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme.

Scheme Share means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder or a Related Body Corporate of the Bidder as at the Record Date.

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

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

Second Court Date means the first day of the hearing of an application made to the Court for an order 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.

Security Interest has the meaning given in section 12 of the Personal Properties Securities Act 2009 (Cth).

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

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

Target Share Registry means Computershare Investor Services Pty Limited ACN 078 279 277.

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

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

Trust Account means an Australian dollar denominated trust account, operated by the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 4.3.

1.2 Interpretation

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

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

provision of either includes consolidations, amendments, re-enactments and replacements;

- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Business Day

Except where otherwise expressly provided, where under this Scheme the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

2. Conditions precedent

2.1 Conditions

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

- (a) as at the Delivery Time, each of the conditions set out in clause 3.1 of the Implementation Agreement (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Implementation Agreement) has been satisfied or waived in accordance with the terms of the Implementation Agreement;
- (b) as at the Delivery Time, neither the Implementation Agreement nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to the Target and the Bidder (each acting reasonably) have been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

2.2 Certificates in relation to Conditions

- (a) On the Second Court Date:
 - (i) the Target 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 the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived; and
 - (ii) the 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 the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived.

- (b) The certificate referred to in clause 2.2(a) constitutes conclusive evidence that such Conditions were satisfied, waived or taken to be waived.

2.3 Termination of Implementation Agreement

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms before the Delivery Time, the Target and the Bidder are each released from:

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

3. Scheme

3.1 Effective Date of this Scheme

Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

3.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date or such later date as the Target and the Bidder agree in writing.

4. Implementation of Scheme

4.1 Lodgement of Court Orders with ASIC

If the Conditions (other than the Condition set out in clause 2.1(e)) are satisfied, the Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves this Scheme, or such other Business Day as the Target and the Bidder agree in writing.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 4.3(b), all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney or agent for the Scheme Shareholders under this Scheme) by:
- (i) the Target delivering to the Bidder a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 7.1 of this Scheme; and
- (ii) the Bidder delivering to the Target a completed Scheme Transfer, duly executed by the Bidder, and attending to the stamping of the Scheme Transfer (if required); and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), the Target must enter, or procure the entry of, the name and address of the Bidder in the Target Share Register as the holder of all of the Scheme Shares.

4.3 Provision of Scheme Consideration

- (a) By no later than the Business Day before the Implementation Date, the Bidder will deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account (provided that any interest on the amount deposited (less bank fees and other charges) will be credited to the Bidder's account).
- (b) On the Implementation Date, subject to the Bidder having complied with clause 4.3(a), the Target must pay or procure the payment of the Scheme Consideration from the Trust Account to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Target Share Register on the Record Date, which obligation will be satisfied by:
- (i) where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target Share Registry to receive dividend payments from the 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 4.3(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 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 4.4).
- (c) To the extent that, following satisfaction of the Target's obligations under clause 4.3(b), there is a surplus in the amount held by the Target as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus may be paid by the Target to the Bidder.

4.4 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to the Scheme Shareholders will be payable to the joint holders;
- (b) any holding statements for Bidder Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

4.5 Unclaimed monies

- (a) The Target may cancel a cheque issued under this clause 4 if the cheque:
 - (i) is returned to the Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.

- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target (or the Target Share Registry) (which request may not be made until that date which is 10 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under this clause 4.5.
- (c) The Unclaimed Money Act 1990 (WA) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of that Act).

4.6 Orders of a court or Regulatory Authority

If written notice is given to the Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by the Target in accordance with this clause 4, then the Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents the Target from making a payment to a particular Scheme Shareholder in accordance with clause 4.3(b), or such payment is otherwise prohibited by applicable law, the Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment, until such time as payment in accordance with this clause 4 is permitted by that order or direction or otherwise by law.

4.7 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.7(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
 - (i) setting out their names and registered addresses as shown in the Target Share Register;
 - (ii) stating that opinion; and
 - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Scheme.

5. Dealings in Target Shares

5.1 Dealings in Target Shares by the Scheme Shareholders

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

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

and the Target must not and will not accept for registration, or recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme and any subsequent transfer by the Bidder or its successors in title), any transmission application, transfer or other request in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

5.2 Target Share Register

The Target will, until the Scheme Consideration has been paid to the Scheme Shareholders and the Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 5 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

5.3 Information to be made available to the Bidder

The Target must procure that as soon as practicable following the Record Date, and in any event by 5.00 pm on the first Business Day after the Record Date, details of the names, Registered Addresses and holdings of Target Shares of every Scheme Shareholder as shown in the Target Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

5.4 Effect of share certificates and holding statements

As from the Record Date (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register (other than for the Bidder) at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

5.5 No disposals after Record Date

If this Scheme becomes Effective, a 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 the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and the Target is entitled to disregard any such disposal.

6. Suspension and termination of quotation

- (a) The Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of trading on the Effective Date.
- (b) The Target must apply to ASX for:
 - (i) termination of official quotation of the Target Shares on ASX; and
 - (ii) the removal of the Target from the official list of ASX,with effect from the close of business on the Business Day immediately following the Implementation Date.

7. General Scheme provisions

7.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the Scheme Transfer to be delivered under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 7.3; and
- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors, officers or secretaries (jointly, severally, or jointly and severally).

7.2 Enforcement of Deed Poll

The Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

7.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to, or to give effect to, the implementation and performance of this Scheme; and
- (b) acknowledges that this Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme) and, to the extent of any inconsistency, overrides the constitution of the Target.

7.4 Scheme Shareholder's agreements and warranties

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;

- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) irrevocably agrees to, on the direction of the Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
- (d) is deemed to have warranted to the Bidder and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder, that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder, be fully paid and free from all security interests including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder under this Scheme.

7.5 Title to Scheme Shares and transfer free from encumbrance

- (a) The Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder, will, at the time of transfer to the Bidder, vest in the Bidder free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

7.6 Appointment of the Bidder as sole proxy

Subject to and immediately upon the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 4.3 of this Scheme, and until the Target registers the Bidder as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) irrevocably appoints and directs the Bidder as its agent and attorney to appoint any of its directors, officers or secretaries from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Schemes Shares registered in its name and sign any shareholders resolution;
- (b) must not itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 7.6(a)); and
- (c) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder reasonably directs.

7.7 Consent to alterations

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

- (a) the Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to this Scheme which the Court thinks fit to impose; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which the Target has consented to in accordance with this clause 7.7.

7.8 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the 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 the Target's registered office or at the Target Share Registry as the case may be.
- (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.

7.9 Inconsistencies

This Scheme binds the Target and all Target Shareholders, and to the extent of any inconsistency, overrides the Target constitution.

7.10 Further assurance

The Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, or otherwise to give full effect to, this Scheme and the transactions contemplated by it.

7.11 No liability when acting in good faith

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

7.12 Stamp duties

The Bidder:

- (a) must pay or procure the payment of all stamp duties and related fines, penalties and interest in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any loss or liability suffered or incurred by the Scheme Shareholders arising from failure to comply with clause 7.12(a).

7.13 Governing law and jurisdiction

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.13(b)(i).

Annexure B - Deed Poll

For personal use only

Deed Poll

Capgemini Australia Pty Limited
Bidder

In favour of each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz
Level 27 QV.1
250 St Georges Terrace
Perth WA 6000
GPO Box 9806
Perth WA 6848
Tel +61 8 9426 8000
Fax +61 8 9481 3095
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Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation.....	2
1.3	Nature of deed poll	2
2.	Conditions precedent	3
2.1	Conditions	3
2.2	Termination	3
2.3	Consequences of termination	3
3.	Scheme obligations	3
4.	Representations and warranties	3
5.	Continuing obligations	4
6.	Notices	4
6.1	How notice to be given	4
6.2	When notice taken to be received	5
6.3	Notices sent by more than one method of communication	6
7.	General	6
7.1	Assignment	6
7.2	Cumulative rights	6
7.3	Further action.....	6
7.4	Stamp duties.....	6
7.5	Variation.....	6
7.6	Waiver.....	7
8.	Governing law and jurisdiction	7

Deed Poll

Date

Party Capgemini Australia Pty Limited ABN 11 092 284 314 of Level 7, 77 King Street Sydney NSW 2000 (**Bidder**)

In favour of Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date (**Scheme Shareholders**)

Background

- A. The Target and the Bidder have entered into the Implementation Agreement.
- B. The Target has agreed in the Implementation Agreement to propose the Scheme, the effect of which will be that the Bidder will acquire all of the Scheme Shares from the Scheme Shareholders, subject to the satisfaction of certain conditions.
- C. In accordance with clause 4.2(j) of the Implementation Agreement, the Bidder is entering into this deed poll.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed poll:

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

Implementation Agreement means the scheme implementation agreement dated 19 July 2021 between the Target and the Bidder pursuant to which, amongst other things, the Target has agreed to propose the Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to the Scheme.

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, substantially in the form of Annexure A to the Implementation Agreement, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to in writing by the Target and the Bidder.

Target means Empired Limited ACN 090 503 843 of Level 7, the Quadrant, 1 William Street Perth WA 6000.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

1.2 Interpretation

In this deed poll headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

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

1.3 Nature of deed poll

The Bidder acknowledges and agrees that:

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

2. Conditions precedent

2.1 Conditions

The Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The Bidder's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

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

unless the Target and the Bidder otherwise agree in accordance with the Implementation Agreement.

2.3 Consequences of termination

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

- (a) the Bidder is released from its obligations to further perform this deed poll except those obligations under clause 7.4 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights it has against the Bidder in respect of any breach of this deed poll which occurred before it was terminated.

3. Scheme obligations

Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than the Business Day before the Implementation Date; and
- (b) undertake all other actions attributed to it under, and otherwise comply with, the Scheme, as if named as a party to the Scheme,

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

4. Representations and warranties

The Bidder represents and warrants that:

- (a) **(Status)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Power)** it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(Authorisation)** it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;

- (d) **(Binding)** this deed poll is valid and binding on it and is enforceable against it in accordance with its terms;
- (e) **(Transaction permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll does not conflict with, or result in the breach of or default under:
- (i) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound; or
 - (ii) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Implementation Agreement); and
- (f) **(Solvency)** it is solvent and no resolution has been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

5. Continuing obligations

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

- (a) the Bidder fully performing its obligations under this deed poll; or
- (b) the termination of this deed poll under clause 2.2.

6. Notices

6.1 How notice to be given

Any notice or other communication to the Bidder under or in connection with this deed poll:

- (a) must be given:
 - (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and
 - (ii) using the address or other details for the Bidder set out in the below table (or as otherwise notified by the Bidder to the Target from time to time under this clause 6):

Party name	Attention	Address (for hand delivery or delivery by courier or post)	Email address
Bidder	General Counsel office	Level 7, 77 King Street Sydney, NSW 2000 Australia	teresa.alan@capgemini.com
<i>with a copy to</i>	Group General Counsel office	Capgemini Service 11, rue de Tilsitt 75017 Paris, France	maria.pernas@capgemini.com isabelle.riviere@capgemini.com walter.vejdovsky@capgemini.com
	Group M&A		
	Tony Damian / Nicole Pedler	Herbert Smith Freehills Level 33, ANZ Tower 161 Castlereagh Street Sydney, NSW 2000 Australia	Tony.Damian@hsf.com Nicole.Pedler@hsf.com

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

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

6.2 When notice taken to be received

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

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

provided that:

- (e) the communication will be taken to be so given by the sender and received by the recipient regardless of whether:
 - (i) the recipient is absent from the place at which the communication is delivered or sent;
 - (ii) the communication is returned unclaimed; and
 - (iii) (in the case of email) the email or any of its attachments is opened by the recipient;
- (f) if the communication specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the communication; and

- (g) if the communication would otherwise be taken to be received on a day that is not a working day or after 5:00 pm, it is taken to be received at 9:00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is delivered or sent).

6.3 Notices sent by more than one method of communication

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

7. General

7.1 Assignment

The rights and obligations of the Bidder and each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity without the prior written consent of the Bidder.

7.2 Cumulative rights

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

7.3 Further action

The Bidder will, promptly at its own expense, do all things and execute and deliver all further documents required by law to give effect to this deed poll and the transactions contemplated by it.

7.4 Stamp duties

The Bidder:

- (a) must pay or procure the payment of all stamp duties and any related fines, penalties and interest in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnifies each Scheme Shareholder against any loss or liability suffered or incurred by the Scheme Shareholders arising from failure to comply with clause 7.4(a).

7.5 Variation

A provision of this deed poll may not be varied unless:

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

in which event the Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such variation.

7.6 Waiver

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the person granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure or delay in exercise, partial exercise, or enforcement of:
- (i) any right, power or remedy provided by law or under this deed poll; or
 - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,
- by any person will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (c) A person is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A person may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.
- (e) This clause 7.6 may not itself be waived except in writing.

8. Governing law and jurisdiction

- (a) This deed poll is governed by the law applying in Western Australia.
- (b) The Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings in connection with this deed poll.
- (c) The Bidder waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8(b).

Executed as a deed poll.

Signed, sealed and delivered by
Capgemini Australia Pty Limited in accordance
with section 127 of the *Corporations Act 2001*
(Cth)
by

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

For personal use only