

ASX/Media Release



Issued: 6 August 2021

Hulon Aquaculture Group Limited (ASX: HUU) (“Company”, “Hulon”)

RECOMMENDED ACQUISITION OF HUON BY JBS

Highlights

- Hulon has entered into a Scheme Implementation Deed with JBS to acquire 100% of Hulon shares by way of a Scheme of Arrangement
- Under the terms of the Scheme, Hulon shareholders will receive A\$3.85 cash per Hulon share
- Hulon’s Board intends to declare a fully franked Special Dividend of up to A\$0.125 per Hulon share prior to implementation of the Scheme, which would enable Hulon shareholders to realise additional benefits from franking credits of up to A\$0.05 per Hulon share¹
- Hulon’s Board considers the Scheme to be in the best interest of Hulon shareholders and unanimously recommends that Hulon shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding the Scheme is in the best interests of shareholders
- Each Hulon Director, including Hulon’s founding and major shareholders, Frances and Peter Bender, intends to vote all the shares held or controlled by them in favour of the Scheme to the extent those shares are entitled to be voted in the Scheme (representing up to approximately 53% of Hulon’s issued shares)
- Hulon shareholders do not need to take any action at this time

Overview of the Scheme

Hulon Aquaculture Group Limited (ASX: HUU) (“Company”, “Hulon”) announces it has entered into a Scheme Implementation Deed with an Australian subsidiary of JBS S.A. (“JBS”) under which it is proposed that JBS will acquire 100% of Hulon for a cash consideration of \$3.85 per share (“Scheme Price”) by way of a scheme of arrangement (“Scheme of Arrangement” or “Scheme”).

The Scheme values Hulon’s equity at approximately \$425 million on a fully diluted basis².

The Scheme Price of \$3.85 in cash represents a:

- 61% premium over the undisturbed closing price of \$2.39, being the last traded price on 26 February before the strategic review was announced;
- 43% premium over the 3 month volume weighted average price³ of \$2.69; and
- 38% premium over the closing price of Hulon shares of \$2.79 on 6 August 2021, the last trading day before this announcement.

The Hulon Board also intends to declare a fully franked special dividend of up to \$0.125 per share immediately prior to implementation of the Scheme (“Special Dividend”). The Special Dividend would have up to \$0.05 per share in franking credits attached. It remains at the discretion of the

¹ Depending on the tax position of individual shareholders.

² Total diluted shares of 110,515,507 includes 642,548 unvested performance rights.

³ Volume weighted average share price based on market trading volume and value up to and including 6 August 2021, being the last trading day before this announcement.

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Hulon Board whether the dividend is ultimately declared and paid. If the Special Dividend is paid, the Scheme consideration would be reduced by the cash amount per share of any such dividend.

Unanimous Recommendation of Hulon Board

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 Hulon shareholders, the Hulon Board unanimously recommends that Hulon shareholders vote in favour of the Scheme.

Subject to those same qualifications, each Hulon Director, including Hulon's founding and major shareholders, Peter and Frances Bender, intends to vote all the shares held or controlled by them in favour of the Scheme to the extent those shares are entitled to be voted in the Scheme (representing up to approximately 53% of Hulon's issued shares).

The Scheme is subject to limited conditions and is not subject to financing or due diligence.

Hulon's Chairman, Mr Neil Kearney, stated: "Having fully considered a range of alternatives as part of a comprehensive strategic review process, the Board believes this transaction provides Hulon shareholders with an opportunity to realise significant value for their shares. The Scheme provides certainty for Hulon shareholders and a compelling premium in cash to recent trading prices for Hulon shares."

Hulon's Managing Director and Chief Executive Officer, Mr Peter Bender, stated: "The recommended acquisition of Hulon by JBS represents an excellent outcome for our shareholders, partners and staff. This is a testament to the strong position Hulon holds in the Australian salmon market. We look forward to seeing the continued growth of the Hulon business as part of JBS. We do not anticipate any disruption to business operations."

JBS Australia's President and Chief Executive Officer, Mr Brent Eastwood, stated: "Our acquisition of Hulon enables us to further grow our Australian protein business and strengthen our presence with consumers and customers. We look forward to continue growing on the leading salmon business Hulon has created and working with its employees, customers and stakeholders to help the company realise this next phase of growth."

Transaction Structures

Under the Scheme Implementation Deed, Hulon's shareholders will be asked to approve two alternative transactions at the Scheme Meeting. The price to be paid by JBS to all Hulon shareholders, including Hulon's founding and major shareholders, Peter and Frances Bender, under the Proposed Structure or the Alternative Structure will be the same. The alternative transaction structures comprise:

Proposed Structure¹: involving the sale to JBS of the Bender family's investment company Surveyors Investments Pty Ltd ("Surveyors Investments") which holds approximately 40% of Hulon shares and no other assets (for a purchase price equal to the Scheme Price multiplied by the number of Hulon shares held by that company) and the acquisition by JBS of all other Hulon shares under the Scheme. Under the Proposed Structure, the Bender family has agreed to provide non-compete undertakings in favour of JBS for a period of up to four years and the shares in Hulon held by Surveyors Investments will be excluded from the Scheme and will not be voted at the Scheme Meeting; or

¹ Referred to as Structure A Scheme.

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- **Alternative Structure**¹: if the Proposed Structure is not approved and the Alternative Structure is approved then the Scheme will not involve a sale of Surveyors Investments to JBS. Instead, JBS will directly acquire 100% of Huon's shares under the Scheme and the Bender family will vote all of their directly or indirectly controlled shares in Huon, representing approximately 53% of the shares outstanding on a fully diluted basis, in favour of the Scheme. In this Alternative Structure the non-compete undertakings in favour of JBS will still apply.

Scheme Implementation Deed

Implementation of the Scheme is subject to certain customary conditions including Huon shareholder approval, approval by the Federal Court of Australia and the Australian Foreign Investment Review Board; there being no material adverse change, prescribed occurrence, restraints or material breach of warranty by Huon; and the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of Huon shareholders.

The Scheme is not subject to any financing or due diligence conditions. JBS has informed Huon that it will fund the transaction using existing cash resources and undrawn debt facilities.

A copy of the Scheme Implementation Deed is attached to this announcement and contains customary exclusivity provisions including no shop, no due diligence and no talk restrictions, as well as notification obligations and a matching right.

The Scheme Implementation Deed also details circumstances under which Huon may be required to pay JBS a break fee of \$4.25 million or approximately 1% of equity value and circumstances where JBS may be required to pay Huon a reverse break fee of \$4.25 million.

Indicative Timetable and Next Steps

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

A Scheme Booklet, containing information relating to the proposed acquisition, both transaction structures and details of the shareholder meeting is expected to be sent to Huon shareholders in late September 2021. It will also contain an Independent Expert's Report on whether the Scheme is in the best interests of Huon shareholders.

Huon shareholders will then have the opportunity to vote on the Scheme at a shareholder meeting, currently expected to be held in mid to late October 2021.

Subject to the conditions of the Scheme being satisfied or (if applicable) waived in accordance with the Scheme Implementation Deed, the Scheme is expected to be implemented in November 2021.

These dates are indicative only and are subject to change.

Huon's financial adviser is Grant Samuel and its legal adviser is Ashurst.

This announcement has been authorised by the Huon Board.

ENDS

¹ Referred to as Structure B Scheme.

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For further information, contact:

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Scheme Implementation Deed

Huon Aquaculture Group Limited

ACN 114 456 781

and

JBS Australia Pty Ltd

ACN 011 062 338

and

Industry Park Pty Ltd

ACN 007 256 215

2021

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Annexure

- A Scheme of Arrangement – Structure A
- B Scheme of Arrangement – Structure B
- C Deed Poll – Structure A
- D Deed Poll – Structure B

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THIS DEED is made on 6 August 2021

BETWEEN:

- (1) **Huon Aquaculture Group Limited** ACN 114 456 781 whose registered office is at Level 13, 188 Collins Street, Hobart TAS 7000 (**Target**);
- (2) **JBS Australia Pty Ltd** ACN 011 062 338 whose registered office is at 62 McRoyle Street, Wacol, QLD 4076 (**Bidder**); and
- (3) **Industry Park Pty Ltd** ACN 007 256 215 whose registered office is at 62 McRoyle Street, Wacol, QLD 4076 (**Bidder Guarantor**).

RECITALS:

- (A) Bidder and Target have agreed that the Schemes will be proposed between Target and the Target Shareholders in accordance with this document.
- (B) Bidder is a subsidiary of Bidder Guarantor.
- (C) Bidder proposes to acquire all Target Shares:
 - (1) held by Target Shareholders (other than the Excluded Shareholder) under the Structure A Scheme for the Scheme Consideration and all of the shares in the Excluded Shareholder pursuant to the Share Sale Agreement; or
 - (2) held by Target Shareholders under the Structure B Scheme for the Scheme Consideration.
- (D) Bidder and Target have agreed to implement either the Structure A Scheme and the Share Sale or the Structure B Scheme, and to undertake other associated matters, in accordance with the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

ACCC means the Australian Competition and Consumer Commission.

Announcement means a press release, announcement or other public statement (other than a draft explanatory statement, an explanatory statement or supplementary explanatory statement as required under Part 5.1 of the Corporations Act).

Approach Notice means a notice setting out all material details of a Competing Proposal including, without limitation, the consideration offered or proposed, conditions and proposed timing of the Competing Proposal, excluding Identifying Details.

ASIC means the Australian Securities and Investments Commission.

ASIC Review Draft means the draft of the Scheme Booklet, which is provided to ASIC for approval under section 411(2) of the Corporations Act.

Associate has the meaning given in section 12(2) of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

ASX Listing Rules means the listing rules of ASX.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it from or by a Government Agency; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Bidder Break Fee means \$4,250,000 (exclusive of GST).

Bidder Group means Bidder and its related bodies corporate and includes Bidder Guarantor.

Bidder Indemnified Party means Bidder, its officers, employees, and advisers and its related bodies corporate and the officers, employees and advisers of each of its related bodies corporate.

Bidder Information means the information provided by Bidder to Target for inclusion in the Scheme Booklet, including:

- (a) information regarding the Bidder Group and the Scheme Consideration;
- (b) the arrangements the Bidder Group has in place to fund and provide the Scheme Consideration; and
- (c) any other information required by applicable law, the ASX Listing Rules and ASIC Regulatory Guides for inclusion in the Scheme Booklet.

Bidder Nominee has the meaning given in clause 2.4.

Bidder Prescribed Event means an Insolvency Event occurring in respect of Bidder or Bidder Guarantor.

Business means the business carried on by the Target Group as at the date of this document.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Hobart, Tasmania, Melbourne, Victoria and Brisbane, Queensland, Australia.

Claim, in relation to a person, means any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Competing Proposal means a proposal, transaction or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed, would mean a person (other than Bidder or its Associates) whether alone or together with its Associates would:

- (a) acquire a Relevant Interest in 20% or more of the Target Shares;

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- (b) acquire control of Target, within the meaning of section 50AA of the Corporations Act;
 - (c) acquire, directly or indirectly, an interest in all or a substantial part of the assets of or business conducted by the Target Group; or
 - (d) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with Target.

Conditions means the conditions precedent set out in clauses 3.2, 3.3 and 3.4.

Confidentiality Deed means the agreement of that name between Target and Bidder in respect of the proposed Scheme dated on or about 7 May 2021.

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

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

DD Cut-off Date means 5 August 2021, or such later date as Target and Bidder agree.

Deed Polls means the Structure A Deed Poll or the Structure B Deed Poll, or both, as the context requires or permits.

Disclosed means disclosed:

- (a) by Target in writing to the Bidder Group prior to the date of this document; or
- (b) in any announcement made by Target on ASX prior to the date of this document.

Effective means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Structure A Scheme or Structure B Scheme (as applicable).

Effective Date means the date on which the Structure A Scheme or Structure B Scheme (as applicable) becomes Effective.

End Date means 28 February 2022 (subject to any extension to that date made under clause 3.10) or such other date as may be agreed by the parties.

Excluded Shareholder means Surveyors Investments Pty Ltd ACN 602 004 179.

Exclusivity Period means the period commencing on the date of this document and ending on the earlier of:

- (a) termination of this document in accordance with its terms;
- (b) the Effective Date; and
- (c) the End Date.

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

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) borrowing from any bank or other financial institution;

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- (b) bill, bond, debenture, note or similar instrument;
 - (c) guarantee;
 - (d) finance or capital lease;
 - (e) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;
 - (f) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
 - (g) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of the Target; or
 - (h) obligation to deliver goods or provide services paid for in advance by any financier.

First Court Date means the first day of the hearing of the Court of an application for an order under section 411(1) of the Corporations Act convening the Scheme Meeting.

General Meeting means the meeting of Target Shareholders to consider approval of the Share Sale Agreement Shareholder Approval, to be held on the Meeting Date.

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the ACCC, ASIC, ASX, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

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

GST Law means the same as "GST Law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Structure A Scheme at the Scheme Meeting or the Structure B Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders (other than the Excluded Shareholder in respect of the Structure A Scheme) present and voting either in person or by proxy.

Independent Directors means Neil Kearney, Simon Lester and Tony Dynon.

Identifying Details means a person's name and other details which would otherwise be reasonably expected to identify that person.

Implementation means the implementation of the Structure A Scheme or the Structure B Scheme (as applicable), on it becoming Effective.

Implementation Date means the fifth Business Day following the Record Date.

Impugned Amount means all or any part of the payment required to be made under clause 11.2 that is found by the Takeovers Panel or court to:

- (a) be unlawful;
- (b) involve a breach of directors' duties; or

(c) constitute Unacceptable Circumstances.

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

Independent Expert's Report means a report prepared by the Independent Expert in respect of the Schemes and the Share Sale, including an opinion from the Independent Expert on whether the Schemes are in the best interests of the Target Shareholders and the Share Sale is fair and reasonable to Target Shareholders (other than the Excluded Shareholder).

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b)
 - (i) a controller or analogous person being appointed to the person or any of the person's property;
 - (ii) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
 - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest or any agent on its behalf, appointing a controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA;
- (d) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) an application being made to a court for an order for its winding up;
- (f) an order being made, or the person passing a resolution, for its winding up;
- (g) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (h) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors;
- (i) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (j) any analogous event under the laws of any applicable jurisdiction.

Loss includes any loss, damage, liability, obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent but excluding any consequential or indirect loss, economic loss or loss of profits.

Matching Right Notice means a notice given in accordance with clause 10.2(a) setting out all material details of a Competing Proposal, including, without limitation, the consideration, conditions and proposed timing of the Competing Proposal, that the Target Board has determined is a Superior Proposal.

Meeting Date means the date of the General Meeting and the Scheme Meeting.

Permitted Dividend means a fully-franked dividend of up to \$0.125 per Target Share (or such other higher amount as Target and Bidder agree in writing) to be paid to Target Shareholders in accordance with the Timetable, that may be paid in accordance with clause 4.3 and such additional dividends as may be approved by Bidder in writing.

PPS Security Interest means a security interest that is subject to the PPSA.

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

Recommendation has the meaning set out in clause 7.1(a).

Record Date means 5:00 pm on the day which is five Business Days after the Effective Date, or any other date (after the Effective Date) agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration under the Structure A Scheme or Structure B Scheme (as applicable).

Register means the register of members of Target and **Registry** has a corresponding meaning.

Regulatory Approval means any approval of a Government Agency which Bidder and Target have agreed before the date of this deed is necessary or desirable to implement the Schemes or any aspect of them.

Relevant Date means, in relation to a Condition, the date or time specified in this document for its fulfilment or, if no date or time is specified, 8.00 am on the Second Court Date, subject, in either case, to extension to that date made under clause 3.10.

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

Representatives means, in relation to an entity:

- (a) each of the entity's subsidiaries; and
- (b) each of the directors, officers, employees, agents, representatives and legal, financial and other expert advisers of the entity or any of its subsidiaries.

Schemes means the Structure A Scheme or the Structure B Scheme, or both, as the context requires or permits.

Scheme Booklet means the information memorandum in respect of the Transaction to be approved by the Court and despatched to Target Shareholders, and includes the Schemes, a copy of the Deed Polls executed by Bidder and Bidder Guarantor, an explanatory statement as that term is defined in section 412 of the Corporations Act, all information required under section 611(7) of the Corporations Act and RG 74, the Independent Expert's Report and notices of meeting for the Scheme Meeting and the General Meeting and proxy forms.

Scheme Consideration means the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$3.85 per Scheme Share, less the amount per Scheme Share of any dividend (including a Permitted Dividend) declared, determined or paid by Target prior to the Implementation Date.

Scheme Meeting means the meeting of Target Shareholders to consider approval of the Structure A Scheme and the Structure B Scheme.

Scheme Share means a Target Share on issue as at the Record Date, excluding in the case of the Structure A Scheme, each Target Share held by the Excluded Shareholder.

Scheme Shareholder means:

- (a) in respect of the Structure A Scheme, each Target Shareholder (other than the Excluded Shareholder) as at the Record Date (taking into account registration of all registrable transfers and transmission applications received at Target's share registry by the Record Date); and
- (b) in respect of the Structure B Scheme, each Target Shareholder as at the Record Date (taking into account registration of all registrable transfers and transmission applications received at Target's share registry by the Record Date).

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

Security Interest means any security interest, including:

- (a) a PPS Security Interest;
- (b) any other mortgage, charge, pledge or lien; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Share Sale means the sale of shares in the Excluded Shareholder pursuant to the Share Sale Agreement.

Share Sale Agreement means the agreement entered into on or about the date of this document between Bidder, Bidder Guarantor and Mr Peter Bender for the sale and purchase of all of the shares in the Excluded Shareholder in the form attached at Annexure E.

Share Sale Agreement Shareholder Approval means a resolution in favour of the transactions contemplated by the Share Sale Agreement passed by the required majority of Target Shareholders (other than the Bidder and Peter Bender and their respective associates) under section 611(7) of the Corporations Act.

Specified Event means an event, occurrence or matter that:

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

Structure A Deed Poll means a document in the form of Annexure C, or in such other form as is agreed in writing between Target and Bidder.

Structure A Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Target Shareholders (other than the Excluded Shareholder) in the form or substantially in the form of Annexure A or in such other form as is agreed in writing between Target and Bidder, subject to any alterations or conditions

made or required by the Court under section 411(6) of the Corporations Act and approved by Target and Bidder.

Structure A Scheme Target Shareholder Approval means a resolution in favour of the Structure A Scheme passed by the required majorities of Target Shareholders (other than the Excluded Shareholder) under section 411(4)(a)(ii) of the Corporations Act.

Structure B Deed Poll means a document in the form of Annexure D, or in such other form as is agreed in writing between Target and Bidder.

Structure B Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Target Shareholders in the form or substantially in the form of Annexure B or in such other form as is agreed in writing between Target and Bidder, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved by Target and Bidder.

Structure B Scheme Target Shareholder Approval means a resolution in favour of the Structure B Scheme passed by the required majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which the Target Board, acting in good faith and after taking advice from the Target's financial and legal advisers determines:

- (a) is capable of being implemented within a reasonable timeframe and in accordance with its terms; and
- (b) would, if so implemented, result in a more favourable outcome for Target Shareholders than would result from the implementation of the Scheme.

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

Target Board means the board of directors of Target.

Target Break Fee means \$4,250,000 (exclusive of GST).

Target Director means a director of Target.

Target Due Diligence Information means all written information relating to the business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of Target and its subsidiaries provided or made available by or on behalf of any member of the Target Group to the Bidder Group on or before the DD Cut-off Date.

Target Group means Target and its subsidiaries (each of Target and each such subsidiary being a member of the Target Group).

Target Indemnified Parties means Target, its officers, employees, and advisers and its related bodies corporate and the officers, employees and advisers of each of its related bodies corporate.

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

Target Material Adverse Effect means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any Specified Events of a similar kind or category, the effect of reducing the consolidated net assets of the Target

Group (calculated in accordance with the accounting policies and practices applied by the Target as at the date of this document) by at least \$50,000,000, but does not include:

- (a) any matter Disclosed (or which ought reasonably have been expected to arise from a matter, event or circumstance which was so Disclosed);
- (b) any change or disruption to the general economic, business or political conditions or changes in any such conditions (including disruptions to, or fluctuations in, stock markets or other financial markets, or changes in interest rates, foreign currency exchange rates or commodity prices) that directly or indirectly impact Australian aquaculture businesses;
- (c) any act of terrorism, war (whether or not declared) natural disaster, pandemic, epidemic or the like;
- (d) any change arising from the COVID-19 virus (or any mutation, variation or derivative), or from any law, order, rule or direction of any Government Agency in relation thereto;
- (e) any change in generally accepted accounting principles or standards (including Accounting Standard AASB141) or the interpretation of them;
- (f) any change relating to or arising from an impairment of or depreciation in the consolidated net assets of the Target Group, other than where the impairment of or depreciation in the consolidated net assets is in connection with or arising from a Specified Event that would otherwise constitute a Target Material Adverse Effect;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this document, the Schemes, the Share Sale Agreement or the transactions contemplated by them;
- (h) a Permitted Dividend;
- (i) any change in any generally applicable law or governmental policy;
- (j) any change occurring with the written consent of Bidder; or
- (k) any loss, damage or expense that is recoverable under Target's insurance policies.

Target Long Term Incentive Plan means the Target Long Term Incentive and Bonus Sacrifice Plan adopted by Target on 23 October 2014.

Target Performance Rights means performance rights issued pursuant to the Target Long Term Incentive Plan.

Target Prescribed Event means the occurrence of any of the following:

- (a) Target converting all or any of the Target Shares into a larger or smaller number of Target Shares;
- (b) Target resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) Target:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;

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- (d) Target declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to Target Shareholders, other than a Permitted Dividend;
 - (e) a member of the Target Group:
 - (i) issuing shares or securities convertible into shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option other than:
 - (A) to a wholly-owned subsidiary of Target; or
 - (B) the granting of Target Performance Rights disclosed prior to the date of this document; or
 - (C) the issue of shares in Target on the vesting of Performance Rights granted prior to the date of this document;
 - (ii) making any change to, or repealing, its constitution;
 - (iii) other than in the ordinary course of business acquiring, offering to acquire or agreeing to acquire any one or more assets (including any one or more shares in any company) having a market value that in aggregate is, or the consideration for which in aggregate is, \$2,000,000 or more;
 - (iv) other than biological assets or in the ordinary course of business, disposing, offering to dispose or agreeing to dispose of any one or more assets (including any one or more shares in any company), or an interest in any one or more assets, having a market value that in aggregate is, or the consideration for which in aggregate is, \$2,000,000 or more (and, for the avoidance of doubt, "dispose" includes sell, transfer, grant an option over, declare or create a trust over, surrender, allow to lapse or encumber);
 - (v) other than in the ordinary course of business and consistent with past practice of the Target Group, creating or agreeing to create any new Security Interest over the whole or a substantial part of its business or property;
 - (vi) entering into, or offering to enter into, any joint venture, asset or profit sharing arrangement, partnership or merger of businesses or of corporate entities (including through a multiple listed companies structure) in respect of any one or more assets (including any one or more shares in any company) or undertakings;
 - (vii) other than in the ordinary course of business or as Disclosed before the date of this document:
 - (A) incurring or committing to, or bringing forward the time for incurring or committing, or granting to another person a right the exercise of which would involve a member of the Target Group incurring or committing to, any capital expenditure or liability for one or more related items or amounts of \$1,000,000 or more; or
 - (B) foregoing any revenue for one or more related items or amounts of \$100,000 or more;
 - (viii) entering into a contract or commitment restraining a member of the Target Group from competing with any person or conducting activities in any market;

- (ix) other than in the ordinary course of business entering into or resolving to enter into a transaction with any related party of Target (other than a related party which is a wholly-owned member of the Target Group) as defined in section 228 of the Corporations Act;
- (x) other than in the ordinary course of business and consistent with past practice:
 - (A) varying or agreeing to vary the employment arrangements or remuneration of any director or employee of any member of the Target Group whose annual remuneration as at the date of this document is \$250,000 or more;
 - (B) amending the terms of the Target Long Term Incentive Plan or any other plan or scheme operated for the benefit of directors or employees of any one or more members of the Target Group;
 - (C) paying or agreeing to pay any bonus, termination or retention payment to any director or employee of any member of the Target Group; or
- (ii) experiencing an Insolvency Event;

except to the extent the occurrence:

- (f) is Disclosed;
- (g) is contemplated under this document or the Schemes; or
- (h) has been expressly consented to in writing by Bidder.

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

Target Shareholder means each person entered in the Register as a holder of Target Shares.

Target Shareholder Approval means:

- (a) in respect of the Structure A Scheme, the Structure A Scheme Target Shareholder Approval and the Share Sale Agreement Shareholder Approval; or
- (b) in respect of the Structure B Scheme, the Structure B Scheme Target Shareholder Approval.

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Timetable means the timetable for the Implementation of the Scheme as set out in Schedule 1, subject to any modifications as the parties may agree in writing.

Transaction means the acquisition of the Scheme Shares (as applicable) by Bidder through implementation of the Schemes in accordance with the terms of this document and the Share Sale Agreement in accordance with the terms of that document.

Treasurer means the Treasurer of Australia.

Unacceptable Circumstances has the meaning given to that term in section 657A of the Corporations Act.

Voting Intention has the meaning set out in clause 7.1(a).

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **controller, entity, officer, related body corporate, security interest** and **subsidiary** have the same meanings as given by the Corporations Act.
- (g) A reference to **\$** or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i)
 - (i) A reference to a matter being, at a relevant time, **to the knowledge** of a person means that the matter is, at that time, within the actual knowledge of the person.
 - (ii) A matter that is not known by a person is not **to the knowledge** of that person even if that matter would have been discovered if that person had made the enquiries that a reasonable person in that person's position would have made.
- (j) Terms defined in the GST Law have the same meaning in this document unless the context otherwise requires.
- (k) A reference to time in this document is a reference to time in Melbourne, Australia.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the previous Business Day.

2. **TARGET SCHEMES**

2.1 **Agreement to propose and implement Schemes**

- (a) Target agrees to propose the Structure A Scheme and the Structure B Scheme concurrently to Target Shareholders and to implement either of them in accordance with Part 5.1 of the Corporations Act and subject to the terms of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.
- (b) Bidder agrees to assist Target to propose and implement the Structure A Scheme in accordance with Part 5.1 of the Corporations Act and subject to the terms of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.
- (c) Bidder agrees to assist Target to propose and, if the Structure A Scheme is not approved by the required majority of Target Shareholders (excluding the Excluded Shareholder), implement the Structure B Scheme in accordance with Part 5.1 of the Corporations Act and subject to the terms of this document, and must use all reasonable endeavours to do so in accordance with the Timetable.

2.2 **Outline of Schemes**

Subject to the terms of this document (including the Conditions) and the Schemes, on the Implementation Date:

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

2.3 **No amendments to Schemes without consent**

Target must not consent to:

- (a) any modification of;
- (b) amendment to; or
- (c) the making or imposition by the Court of any condition in respect of,

the Schemes without the prior written consent of Bidder.

2.4 **Bidder Nominee**

- (a) Bidder may nominate, under this clause 2.4, a direct or indirect subsidiary of Bidder Guarantor (**Bidder Nominee**) to perform the obligations of Bidder under the Schemes by giving written notice to Target of the Bidder Nominee at least one Business Day before the ASIC Review Draft is submitted to ASIC.
- (b) Each of Bidder and Bidder Guarantor undertakes and warrants to Target that, if a Bidder Nominee is nominated to acquire all of the Scheme Shares pursuant to clause 2.4(a):

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- (i) Bidder, Bidder Guarantor and Bidder Nominee will all enter into the Deed Polls;
 - (ii) Bidder and Bidder Guarantor will continue to be bound by this document as if Bidder was still the acquiring entity;
 - (iii) Bidder and Bidder Guarantor will ensure the Bidder Nominee completes the acquisition in accordance with the terms of this document and the Structure A Deed Poll or the Structure B Deed Poll, as applicable; and
 - (iv) Bidder Guarantor will guarantee the performance of the obligations of Bidder Nominee under this document and the Structure A Deed Poll or the Structure B Deed Poll, as applicable.

3. **CONDITIONS**

3.1 **Obligations not binding until Conditions satisfied**

Subject to this clause 3, the obligations of the parties with respect to Implementation (including the obligations of Bidder under clauses 4.1, 4.2 and 5.2(i) to provide or procure the provision of the Scheme Consideration) do not become binding unless and until each of the Conditions is satisfied or waived under clause 3.6.

3.2 **Conditions for the benefit of both Target and Bidder**

The Conditions include the following:

- (a) **(orders convening Meeting)** the Court makes orders convening the Scheme Meeting under section 411(1) of the Corporations Act;
- (b) **(Regulatory Approvals)** all Regulatory Approvals (if any) are obtained and those approvals have not been withdrawn or revoked;
- (c) **(No regulatory intervention)** no Court or Government Agency has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Schemes (or, in the case of the Structure A Scheme only, the Share Sale) and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date;
- (d) **(Court approval of Scheme)** the Court makes orders under section 411(4)(b) of the Corporations Act approving the Structure A Scheme or Structure B Scheme, as applicable; and
- (e) **(order lodged with ASIC)** an office copy of the Court order approving the Structure A Scheme or Structure B Scheme, as applicable under section 411(4)(b) of the Corporations Act is lodged with ASIC.

3.3 **Conditions for the benefit of Bidder**

The Conditions include the following:

- (a) **(FIRB approval)** before 5.00 pm on the Business Day before the Second Court Date one of the following occurs:
 - (i) Bidder has received written notification by or on behalf of the Treasurer of the Commonwealth of Australia under the FATA to the effect that the

Commonwealth Government has no objection under its foreign investment policy to Bidder acquiring all the Target Shares under the Scheme and all of the shares in the capital of the Excluded Shareholder under the Share Sale Agreement, either on an unconditional basis or subject only to:

- (A) 'standard' tax conditions which are in the form, or substantially in the form, of those set out in items 1 to 6 of Part D of the Australian Foreign Investment Review Board's Guidance Note 12 'Tax Conditions' (in the form last updated on 18 December 2020); and
 - (B) such other conditions acceptable to Bidder acting reasonably;
- (ii) the period provided for under the FATA during which the Treasurer may make an order or interim order under the FATA prohibiting Bidder acquiring Target Shares under the Scheme and the shares in the Excluded Shareholder under the Share Sale Agreement has elapsed without such an order being made;
 - (iii) if an interim order has been made to prohibit Bidder acquiring Target Shares under the Scheme and shares in the Excluded Shareholder under the Share Sale Agreement, the subsequent period for making a final order under the FATA has elapsed without any final order being made;
- (b) **(no Target Material Adverse Effect)** during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Target Material Adverse Effect occurs.
 - (c) **(no Target Prescribed Event)** during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Target Prescribed Event occurs; and
 - (d) **(Target representations and warranties)** each of the representations and warranties given or made by Target under clause 12 is true and correct as at the time it is given or made.

3.4 **Conditions for the benefit of Target**

The Conditions include the following:

- (a) **(Target Shareholder Approval):**
 - (i) in the case of the Structure A Scheme only, Structure A Scheme Target Shareholder Approval and the Share Sale Agreement Shareholder Approval is obtained at the General Meeting is obtained; or
 - (ii) in the case of the Structure B Scheme only, Structure B Scheme Target Shareholder Approval is obtained,at the Scheme Meeting convened in accordance with the orders made under section 411(1) of the Corporations Act;
- (b) **(Scheme priority)** In the case of the Structure B Scheme only:
 - (i) at the Scheme Meeting, the Structure A Scheme is not approved by Scheme Shareholders (other than the Excluded Shareholder) by the majorities required under section 411(4)(a)(ii) of the Corporations Act; or
 - (ii) at the Second Court Date, the Structure A Scheme is not approved by order of the Court under section 411(4)(b) of the Corporations Act or is only

approved on conditions that impose unduly onerous obligations upon the parties (each acting reasonably);

- (c) **(Independent Expert's Report)** the Independent Expert's Report concludes that:
- (i) in relation to the Structure A Scheme only, the Structure A Scheme is in the best interest of Target Shareholders;
 - (ii) in relation to the Structure B Scheme only, the Structure B Scheme is in the best interest of Target Shareholders; and
 - (iii) in relation to the Structure A Scheme only, the Share Sale Agreement is fair and reasonable or not fair but reasonable to Target Shareholders;
- (d) **(no Bidder Prescribed Event)** during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date, no Bidder Prescribed Event occurs; and
- (e) **(Bidder and Bidder Guarantor representations and warranties)** each of the representations and warranties given or made by Bidder or Bidder Guarantor under clause 12 is true and correct as at the time it is given or made.

3.5 **Benefit of Conditions**

The Conditions in:

- (a) clause 3.2 are for the benefit of both Bidder and Target;
- (b) clause 3.3 are for the benefit of Bidder; and
- (c) clause 3.4 are for the benefit of Target.

3.6 **Waiver of Conditions**

- (a) If a Condition has been included for the benefit of:
 - (i) one party only, only that party may, in its sole and absolute discretion, waive the breach or non-fulfilment of the Condition;
 - (ii) more than one party, the breach or non-fulfilment of the Condition may be waived only by the consent of all those parties.
- (b) However, a party for whom a Condition has been included must not waive the Condition if it would result in a breach of law.
- (c) The breach or non-fulfilment of a Condition may only be waived in writing.
- (d) If a party waives the breach or non-fulfilment of a Condition, that waiver precludes the party from suing another party for any breach of this document that resulted in the breach or non-fulfilment of the Condition.

3.7 **Fulfilment of Conditions**

Each party must:

- (a) use its reasonable endeavours (other than waiver) to ensure and procure that each Condition is satisfied as soon as practicable after the date of this document and continues to be satisfied at all times until the last time it is to be satisfied (as applicable);

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- (b) not take any action or refrain from taking any action (except as required by law) designed to prevent the Conditions being satisfied, without the prior consent of the other party;
 - (c) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
 - (d) promptly inform the other party of any circumstances of which it becomes aware which may result in any of the Conditions not being satisfied in accordance with its terms; and
 - (e) promptly advise the other party of the satisfaction of a Condition.

3.8 **Regulatory Approvals**

Each party must:

- (a) promptly identify and (in relation to those Regulatory Approvals for which it is responsible) apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals made by it, redacting confidential information or providing such information to the other party on an 'outside counsel only' basis;
- (b) take all the steps which it is responsible for, or which are otherwise reasonably necessary or desirable on its part in order to obtain the Regulatory Approvals;
- (c) (as far as practicable and permissible) consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or through an adviser) with any Government Agency relating to any Regulatory Approval or the condition in clause 3.3(a) and, without limitation:
 - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency and make such amendments as the other party reasonably requires; and
 - (ii) provide copies of any written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be);
- (d) respond to all requests for information in respect of the applications for Regulatory Approvals or the condition in clause 3.3(a) at the earliest practicable time, to the extent such information is within its possession or control;
- (e) provide the other with all information and assistance reasonably requested by such other party in connection with the applications for Regulatory Approvals or the condition in clause 3.3(a);
- (f) to the extent that it is within its control, use its best endeavours to procure that there is no occurrence that would prevent the Regulatory Approvals or the condition in clause 3.3(a) from being obtained before 5.00 pm on the Business Day before the Second Court Date and not take any action that will or is likely to hinder or prevent the Regulatory Approvals or the condition in clause 3.3(a) from being obtained before 5.00 pm on the Business Day before the Second Court Date except to the extent that such action is required by law; and
- (g) so far as it is able, allow the other party and its authorised Representatives the opportunity to be present and make submissions at any meetings with any Government Agency relating to the Regulatory Approvals or the condition in clause 3.3(a).

3.9 **Parties to provide certificate to Court**

- (a) Each of Target and Bidder must provide to the other and to the Court before commencement of the hearing by the Court of the application for the order under section 411(4)(b) of the Corporations Act, a certificate executed as a deed or such other evidence as the Court requests, confirming whether or not the conditions set out in clauses 3.2 to 3.4 included for its benefit, other than the conditions in clauses 3.2(d) and 3.4(a), have been satisfied (or waived by it) in accordance with the terms of this document.

3.10 **If a Condition is not fulfilled or waived**

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this document by the Relevant Date;
- (b) there is an act, failure to act or occurrence which will prevent a Condition being satisfied by the Relevant Date (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) the Structure A Scheme or Structure B Scheme (as applicable) has not become Effective by the End Date,

the parties:

- (d) must consult in good faith to determine whether the Schemes may proceed by way of alternative means or method so as to achieve a commercial outcome which reflects the Schemes; and
- (e) may agree to extend the Relevant Date or the End Date, or both.

3.11 **Failure to agree**

- (a) If the parties are unable to reach agreement under clause 3.10 within 5 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) any party that benefits from the Condition may, subject to clause 3.11(b), terminate this document in accordance with clause 14.1 before 8.00 am on the Second Court Date.
- (b) A party will not be entitled to terminate this document under this clause if the relevant Condition has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.
- (c) For the avoidance of doubt, no right of termination arises under this clause 3.11 if either the Structure A Scheme or the Structure B Scheme becomes Effective.

3.12 **Scheme voted down**

If the Structure A Scheme Target Shareholder Approval or the Structure B Scheme Target Shareholder Approval (as applicable) is not obtained at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and it appears to Target or Bidder (acting reasonably) that there are reasonable grounds on which an application could be made to the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test (**Order**), that party may give notice to the other within three Business Days after the Scheme Meeting setting out those grounds and if such notice is given:

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- (a) Target must promptly after such notice is given apply to Court for the Order by making such submissions to the Court and filing such evidence as counsel engaged by Target to represent it in Court proceedings related to the relevant Scheme, in consultation with Bidder, considers is reasonably required to persuade the Court to exercise its discretion; and
 - (b) the cost of the application for the Order is to be borne equally between Target and Bidder.

4. **OUTLINE OF THE SCHEMES**

4.1 **Scheme Consideration**

- (a) Subject to the Structure A Scheme or Structure B Scheme (as applicable) becoming Effective, Bidder undertakes and warrants to Target (in its own right and separately as trustee or nominee for each of the Scheme Shareholders) that, in consideration for the transfer to Bidder of each Target Share held by a Scheme Shareholder under the terms of that Scheme, Bidder will, subject to the terms of this document, the Deed Polls and the Scheme (applicable to that Scheme):
 - (i) accept that transfer; and
 - (ii) provide the Scheme Consideration to each Scheme Shareholder.

4.2 **Target Performance Rights**

- (a) Target must ensure that, by no later than the Effective Date, there are no unvested Target Performance Rights.
- (b) In order to comply with its obligation under clause 4.2(a), Target must cause all of the unvested Target Performance Rights to vest and, following such vesting, either:
 - (i) cause the relevant number of Target Shares to be issued or transferred to each of the relevant former holders of Target Performance Rights in sufficient time to allow the relevant former holders of the Target Performance Rights to participate in the Schemes in respect of those Target Shares; or
 - (ii) make a cash payment to the holder in lieu of an allocation of Target Shares in exchange for the cancellation of the relevant Target Performance Rights with effect from the Effective Date which, unless otherwise agreed with Bidder, does not exceed the Scheme Consideration for the number of Target Shares to which those Target Performance Rights relate.
- (c) By no later than the First Court Date, Target must provide evidence, in the form of board minutes or similar documents, to Bidder's reasonable satisfaction, that Target will, if the Scheme becomes Effective, be able to satisfy its obligations under clause 4.2(b).

4.3 **Permitted Dividend**

- (a) Despite any other provision of this document, Target may declare and pay a Permitted Dividend to Target Shareholders, provided that:
 - (i) the Permitted Dividend must be paid in cash;
 - (ii) the Permitted Dividend is declared (subject to the Structure A Scheme or Structure B Scheme (as applicable) becoming Effective and there being sufficient franking credits available) on or prior to the Effective Date, and the

record date for the Permitted Dividend is a date that is no later than the Scheme Record Date;

- (iii) the payment date for the Permitted Dividend will be the Implementation Date; and
- (iv) to the extent the Permitted Dividend is franked, the franking account of Target will not be in deficit after the payment of the Permitted Dividend and Target must provide Bidder with supporting documents evidencing (to Bidder's reasonable satisfaction) that the Permitted Dividend does not breach any applicable laws.

- (b) The parties acknowledge and agree that if the Permitted Dividend is declared in accordance with clause 4.3(a), the Scheme Consideration will be reduced by the amount of the Permitted Dividend (disregarding any franking credits).

5. OBLIGATIONS OF THE PARTIES

Each party must use reasonable endeavours to give effect to the Schemes, subject to compliance with their respective obligations, powers and duties under this document, their constituent documents and all applicable laws and the proper performance by the directors of each of the parties of their fiduciary duties.

5.1 Target obligations

Target must take all necessary steps to propose and implement the Schemes as expeditiously as practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:

- (a) **(Announcement)** on the date of this document, make an Announcement, in a form agreed between Target and Bidder which includes a statement (on the basis of written statements made to it by each of its directors) that each Target Director:
 - (i) considers the Schemes to be in the best interest of Target Shareholders and recommends that Target Shareholders vote in favour of the Schemes at the Scheme Meeting; and
 - (ii) who holds or controls Target Shares intends to vote his or her Target Shares in favour of the Schemes to the extent those Target Shares are entitled to be voted on the relevant Scheme,subject to no Superior Proposal emerging and the Independent Expert's Report concluding that the Schemes are in the best interest of Target Shareholders;
- (b) **(Independent Expert's Report)** as soon as reasonably practicable after the date of this document, appoint the Independent Expert and commission the preparation of the Independent Expert's Report, including providing all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (c) **(Scheme Booklet):**
 - (i) as soon as practicable after the date of this document, prepare the Scheme Booklet in accordance with clause 5.3;
 - (ii) provide Bidder with successive drafts of the Scheme Booklet;

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- (iii) provide Bidder with an advanced draft of the Scheme Booklet within a reasonable time before providing it to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
 - (iv) acting reasonably, consider in good faith, for the purpose of amending those drafts, comments from Bidder on those drafts; and
 - (v) seek approval from Bidder for the form and context in which the Bidder Material appears in the Scheme Booklet, which approval Bidder must not unreasonably withhold or delay;
- (d) **(Regulatory Approvals)** consult with Bidder on all aspects of communications with Government Agencies in relation to the Scheme and, as expeditiously as practicable:
- (i) apply for the Regulatory Approvals which Target is responsible for and provide Bidder with a copy of all applications;
 - (ii) take all steps it is responsible for in the approval process;
 - (iii) respond to requests for information from the relevant Government Agencies in relation to the Regulatory Approvals at the earliest practicable time;
 - (iv) provide Bidder with all information reasonably requested in connection with the applications for Regulatory Approvals for which Bidder must apply under clause 5.2(g); and
 - (v) so far as it is able, at Bidder's request, allow Bidder's Representatives the opportunity to be present at any meetings with any Government Agency about the Regulatory Approvals;
- (e) **(liaison with ASIC)** as soon as practicable, and no later than 14 days before the First Court Date:
- (i) provide an ASIC Review Draft to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of the ASIC Review Draft, keep Bidder reasonably informed of any matters raised by ASIC in relation to the ASIC Review Draft and use its best endeavours, in consultation with Bidder, to resolve any such matters (provided that, where any matters relate to Bidder Information, Target must not take any steps to address them without the prior written consent of Bidder, not to be unreasonably withheld or delayed);
- (f) **(continuing obligation of disclosure)** subject to any order of the Court and applicable law, ensure that the Scheme Booklet (but in respect of the Bidder Information, subject to Bidder complying with its obligations under clauses 5.2(c) and 5.2(e)) is updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including because of any material omission) and otherwise complies with all applicable laws;
- (g) **(approve the Scheme Booklet)** as soon as reasonably practicable after ASIC has confirmed that it has no objection to the Schemes, or if ASIC raises any objection to the Schemes, after that objection has been resolved, procure that a meeting of the Target Board is convened to approve the Scheme Booklet for despatch to Target Shareholders (and provide Bidder with a copy of an extract of the applicable Target

Board resolutions from the applicable minutes of the meeting as soon as practicable after those minutes have been prepared and signed);

- (h) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders), and provide Bidder with successive drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of enabling Bidder and its Representatives to review and comment on those drafts;
- (i) **(consult with Bidder)** in a timely manner consult with Bidder as to the form and content of all documents required for the purposes of the Schemes, including:
- (i) the Scheme Booklet, including taking into account Bidder's reasonable comments and incorporating the Bidder Information; and
 - (ii) the Court proceedings relating to the Scheme, including taking into account Bidder's reasonable comments in relation to the documents required for the Court proceedings;
- (j) **(apply to Court for order to convene Scheme Meeting)** apply to the Court under section 411(1) of the Corporations Act for an order directing Target to convene the Scheme Meeting;
- (k) **(convene General Meeting)** convene the General Meeting to be held on the Meeting Date;
- (l) **(convene Scheme Meeting)** convene the Scheme Meeting in accordance with any order made by the Court under section 411(1) of the Corporations Act;
- (m) **(explanatory statement)** take all reasonable measures necessary to cause ASIC to register the Scheme Booklet under section 412 of the Corporations Act;
- (n) **(despatch Scheme Booklet)** as expeditiously as practicable following an order made by the Court under section 411(1) of the Corporations Act, despatch a copy of the Scheme Booklet to each Target Shareholder and to all other persons entitled to receive notices of the General Meeting and Scheme Meeting;
- (o) **(Information)** provide reasonable information about the Scheme and Target Shareholders to Bidder Group, which Bidder requests and reasonably requires to:
- (i) canvass views on the Transaction by Target Shareholders;
 - (ii) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration; and
 - (iii) review the tally of proxy appointments and directions received by Target before the Meeting Date,
- and provide Bidder:
- (iv) on a weekly basis, a copy of the latest Target Register; and
 - (v) on a weekly basis, the most recently available information in Target's possession regarding the beneficial ownership of Target Shares including a copy of the most recent beneficial ownership analysis report received by Target;

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- (p) **(inform shareholders)** if it becomes aware of information after the date of despatch of the Scheme Booklet which is material for disclosure to Target Shareholders in deciding whether to approve the Schemes, subject to applicable laws and any order of the Court, inform shareholders of such information in an appropriate and timely manner. To the extent that any supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed);
 - (q) **(section 411(17)(b) statement)** if the Target Shareholder Approval is obtained, apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act in relation to the Structure A Scheme or Structure B Scheme (as applicable);
 - (r) **(Promote Transaction)** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Bidder, meeting with key Target Shareholders;
 - (s) **(representation at Court proceedings)** procure that it is represented by counsel at all Court proceedings affecting the Schemes;
 - (t) **(Court approval)** subject to satisfaction or waiver of all Conditions other than the Conditions in clause 3.2(d) and 3.2(e), apply to the Court for orders approving the Structure A Scheme or Structure B Scheme (as applicable) under section 411(4) of the Corporations Act;
 - (u) **(no Target Prescribed Event)** take all reasonable steps to ensure that no Target Prescribed Event occurs during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date and, if a Target Prescribed Event occurs, immediately inform Bidder;
 - (v) **(certificate)** before commencement of the hearing by the Court of the application for the order under section 411(4)(b) of the Corporations Act, give:
 - (i) to Bidder a certificate signed by Target stating whether or not each representation or warranty given by Target is true and correct as at the time it is given or made under clause 12; and
 - (ii) to Bidder and the Court the certificate referred to in clause 3.9;
 - (w) **(not act inconsistently)** not act in a manner inconsistent with obtaining Court approval for the Schemes;
 - (x) **(lodge copy of order)** if the Court approves the Structure A Scheme or Structure B Scheme (as applicable) under section 411(4) of the Corporations Act, lodge an office copy of the Court order with ASIC in accordance with section 411(10) of the Corporations Act no later than the first Business Day after the day on which the Court approves the relevant Scheme;
 - (y) **(register transfers)** register all transfers of Target Shares to Bidder on the Implementation Date (subject to provision of the Scheme Consideration in accordance with the applicable Scheme and Deed Poll);
 - (z) **(appeal process)** if the Court refuses to make any orders directing Target to despatch the Scheme Booklet and convene the Scheme Meeting or approving the Structure A Scheme or Structure B Scheme (as applicable), Target must consult with Bidder in good faith as to whether to appeal the Court's decision;
 - (aa) **(implementation of Scheme)** if the Structure A Scheme or Structure B Scheme (as applicable) is approved by the Court:

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- (i) as soon as possible after the Court makes those orders, and in any event by no later than 4.00 pm on the Business Day after those orders, lodge with ASIC an office copy of the orders approving the relevant Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Scheme Consideration, in accordance with the relevant Scheme, and provide such information to Bidder;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date;
 - (iv) use its best endeavours to ensure that ASX suspends trading in Target Shares with effect from the close of trading on the Effective Date;
 - (v) subject to clause (iv), use its best endeavours to ensure that the Target Shares continue to be quoted on ASX (even if suspended from trading) until the close of trading on the Implementation Date; and
 - (vi) do all other things contemplated by or necessary to lawfully give effect to the Structure A Scheme or Structure B Scheme (as applicable) and the orders of the Court approving the relevant Scheme; and
- (bb) **(ASX listing)**: Maintain Target's admission to the official list of ASX and the quotation of Target Shares on ASX up to and including the Implementation Date.

5.2 Bidder obligations

Bidder must take, and Bidder Guarantor must procure Bidder takes (other than in respect of clause 5.2), all necessary steps to assist Target to propose and implement the Schemes as expeditiously as practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:

- (a) **(Announcement)** on the date of this document make an Announcement, in a form agreed between Target and Bidder;
- (b) **(Independent Expert's Report)** provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(Scheme Booklet)**:
 - (i) as expeditiously as practicable, give to Target or its Representatives for inclusion in the Scheme Booklet the Bidder Information (in reasonable time to allow Target to prepare the Scheme Booklet in accordance with this document); and
 - (ii) confirm in writing to Target before 8.00 am on the First Court Date that:
 - (A) the Bidder Information is not misleading or deceptive in any material respect (including because of any material omission) and otherwise complies with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules; and
 - (B) the Scheme Booklet includes all information regarding Bidder as is required under all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules;

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- (d) **(review of Scheme Booklet)** as soon as reasonably practicable after receiving them, review the drafts of the Scheme Booklet prepared by Target and provide comments on those drafts (acting reasonably and in good faith);
 - (e) **(further information):**
 - (i) inform Target in writing if it becomes aware that the Bidder Information (or any part of it) is or has become misleading or deceptive in any material respect (including because of any material omission) or otherwise does not comply with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules; and
 - (i) as expeditiously as practicable give to Target any further information reasonably required by Target before the Meeting Date to ensure that the Bidder Information is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and complies with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes and the ASX Listing Rules;
 - (b) **(approval of draft for ASIC)** as soon as reasonably practicable after receipt from Target of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Bidder Board is held to consider approving the Bidder Material contained in that draft as being in a form appropriate for provision to ASIC for review;
 - (c) **(liaison with ASIC)** provide reasonable assistance to Target to assist Target to resolve any matter raised by ASIC regarding the Scheme Booklet, the Schemes or the Transaction during its review of the Scheme Booklet;
 - (d) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Bidder Board is held to consider approving the Bidder Material contained in the Scheme Booklet as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court;
 - (e) **(Court documents)** as soon as reasonably practicable after receiving them, review the draft Court documents prepared by Target and provide comments on those drafts (acting reasonably and in good faith);
 - (f) **(representation at Court proceedings)** procure that it is represented by counsel at all Court proceedings affecting the Schemes;
 - (g) **(Regulatory Approvals)** consult with Target on all aspects of communications with Government Agencies in respect of the Schemes and the Transaction and as expeditiously as practicable:
 - (i) apply for the Regulatory Approvals which Bidder is responsible for and provide Target with a copy of all applications;
 - (ii) take all steps it is responsible for in the approval process;
 - (iii) respond to requests for information from the relevant Government Agencies at the earliest practicable time;
 - (iv) provide Target with all information reasonably requested in connection with the applications for Regulatory Approvals for which Target must apply under clause 5.1(d); and

- (v) so far as it is able, at Target's request, allow Target's Representatives the opportunity to be present at any meetings with any Government Agency about the Regulatory Approvals;
- (f) **(Deed Polls)** before the First Court Date, duly execute and enter into the Deed Polls and procure that the Bidder Guarantor duly executes and enters into the Deed Polls, and deliver them to Target;
- (g) **(no Bidder Prescribed Event)** take all reasonable steps ensure that no Bidder Prescribed Event occurs during the period commencing on the date of this document and ending at 8.00 am on the Second Court Date and if a Bidder Prescribed Event occurs, immediately inform Target;
- (h) **(certificates)** before commencement of the hearing by the Court of the application for the order under section 411(4)(b) of the Corporations Act, give:
- (i) to Target a certificate signed by Bidder stating whether or not each representation or warranty given by Bidder is true and correct as at the time it is given or made under clause 12; and
- (ii) to Target and the Court the certificate referred to in clause 3.9;
- (i) **(Scheme Consideration)** if the Structure A Scheme or Structure B Scheme (as applicable) becomes Effective, provide the Scheme Consideration as contemplated by the relevant Scheme and in accordance with the relevant Deed Poll on the Implementation Date;
- (j) **(Scheme)** do all things within its power that are reasonably necessary to lawfully give effect to the Structure A Scheme or Structure B Scheme (as applicable) and the orders of the Court approving the relevant Scheme; and
- (k) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws and regulations.

5.3 **Scheme Booklet content and responsibility statement**

- (a) As soon as reasonably practicable after the date of this document and otherwise in accordance with the Timetable, Target must prepare the Scheme Booklet and use all reasonable endeavours to ensure that the Scheme Booklet complies with:
- (i) the requirements of all applicable laws, relevant ASIC regulatory guides (including RG 60 and RG 74), Takeovers Panel policy and guidance notes and the ASX Listing Rules; and
- (ii) this clause 5.3,
- except that the obligation to do so in respect of the Bidder Material is subject to Bidder complying with its obligations under clauses 5.3(a) and 5.3(b) and this clause 5.3.
- (b) The Scheme Booklet will include or be accompanied by:
- (i) the Schemes;
- (ii) the Deed Polls;
- (iii) the Target Information (which, to avoid any doubt, must include the recommendation and undertaking referred to in clause 5.1(a));

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- (iv) the Bidder Information;
 - (v) the notices convening the General Meeting and the Scheme Meeting, together with proxy forms for the General Meeting and the Scheme Meeting;
 - (vi) a summary of the terms of this document; and
 - (vii) a copy of the Independent Expert's Report.
- (c) Target must undertake appropriate verification processes in relation to the Target Information included in the Scheme Booklet.
 - (d) Bidder must undertake appropriate verification processes in relation to the Bidder Information included in the Scheme Booklet.
 - (e) Bidder and Target agree the Scheme Booklet must include a responsibility statement in a form to be agreed by the parties which will contain words to the effect that:
 - (i) Target has provided, and is responsible for, the Target Information, and that Bidder does not assume any responsibility or liability for the accuracy or completeness of that information, but Target does take responsibility and liability for that information;
 - (ii) Bidder has provided, and is responsible for, the Bidder Information, and that Target does not assume any responsibility or liability for the accuracy or completeness of that information, but Bidder does take responsibility and liability for that information; and
 - (f) If, after a reasonable period of consultation and compliance by Target with its obligations under this clause 5, Bidder and Target, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:
 - (i) where the determination 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), Target will, acting reasonably and in good faith, make such amendments to that information in the Scheme Booklet as Bidder may reasonably require; and
 - (ii) in any other case, Target will, acting reasonably and in good faith, decide the final form of that information in the Scheme Booklet.
 - (g) Target and Bidder each agree that the efficient preparation of the Scheme Booklet and the implementation of the Schemes are in the interests of Target Shareholders and Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 5 and to implement the Structure A Scheme and Structure B Scheme (as applicable) as soon as reasonably practicable and otherwise substantially in accordance with the Timetable.

5.4 **Conduct of Court proceeding**

The parties are entitled to separate representation at all Court proceedings relating to the Schemes. This document does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. Target and Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Structure A Scheme or Structure B Scheme (as applicable) as contemplated by this document.

5.5 **No partnership or joint venture**

Subject to this document, nothing in this document requires Bidder to act at the direction of Target nor requires Target to act at the direction of Bidder. The Business will continue to operate independently from the other parties until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between Bidder and Target.

6. **PRE-IMPLEMENTATION OBLIGATIONS**

6.1 **Overview**

From the date of this document up to and including the Implementation Date, Target must, and must cause each member of the Target Group to, conduct the Business in the ordinary course and in substantially the same manner as previously conducted and must:

- (a) use reasonable endeavours to preserve relationships with customers, suppliers, joint venture parties, landlords, licensors, licensees and others having business dealings with them, and to retain the services of all key employees;
- (b) keep Bidder informed of material developments concerning the conduct of the Business;
- (c) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (d) comply in all material respects with all material contracts to which a member of Target Group is a party, and with laws, authorisations and licences applicable to each member of Target Group;
- (e) maintain at least the level of insurances of the Target Group as in place as at the date of this document;
- (f) not take or fail to take any action that constitutes a Target Prescribed Event or that could reasonably be expected to result in a Target Prescribed Event, or authorise or agree to do any such thing;
- (g) promptly notify Bidder in writing of any of the following matters of which Target Group becomes aware, and such written notification must include a reasonable summary of the relevant matter:
 - (i) events, facts, matters or circumstances which would or would be reasonably expected to either constitute a Target Material Adverse Effect or have a material adverse effect on the financial or operational performance or the reputation of the Target Group or the Target Group's relationships with Government Agencies, financiers or key business partners (including customers and suppliers); and
 - (ii) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any member of Target Group and which is reasonably likely to result in a material liability for any member of Target Group or any breach, default, event of default, cancellation event or review event under an existing financing arrangement.

6.2 **Conduct of Business restrictions**

From the date of this document up to and including the Implementation Date, Target must not, and must cause each member of the Target Group to not, do any of the following (or agree or offer or announce an intention to do any of the following):

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- (a) incur or agree to incur any professional advisor fees (including, without limitation, legal, investment banking, accounting, tax, independent expert and media advisor fees) if the aggregate amount of such fees incurred, or agreed to be incurred in relation to the Transaction or the strategic review announced by Target to ASX on 26 February 2021 is greater than the amount as agreed in writing by the parties on or before the date of this document;
 - (b) allow any member of Target Group to incur any additional Financial Indebtedness over \$10 million (except for draw-downs approved in writing by Bidder on existing banking facilities) or guarantee or indemnify the obligations of any person other than a member of the Target Group, other than in respect of trade creditors, employees, payroll tax, income tax and other working capital in the usual and ordinary course of business and consistent with past practice and any other payments referred to in or contemplated by this document;
 - (c) other than as approved or directed in writing by Bidder (not to be unreasonably withheld or delayed), amend or take any action that would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of any Financial Indebtedness arrangements (including the Existing Financing Agreements) to which one or more members of the Target Group are a party;
 - (d) settle or compromise any dispute, audit or inquiry in relation to Tax or amend any tax return, other than in the ordinary course of its business; or
 - (e) commence, threaten in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding that relates to potential costs or liability of more than \$300,000 (after allowing for insurance recoveries), other than pursuing debts in the ordinary course of business.

6.3 **Exceptions to conduct of business provisions**

Nothing in clauses 6.1 or 6.2 restrict the ability of the parties to take any action which:

- (a) is expressly required or permitted by this document, the Schemes, the Share Sale Agreement or otherwise required by law;
- (b) has been Disclosed; or
- (c) has been agreed to in writing by Bidder or Target, as applicable.

6.4 **Access to Target**

Between the date of this document and the Implementation Date, Target must provide Bidder and their respective officers and advisers with reasonable access to Target's officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws and in accordance with any information exchange protocol agreed between the parties) which Bidder reasonably requires for the purposes of:

- (a) applying for all relevant Regulatory Approvals;
- (b) understanding the financial position of it and its subsidiaries including the cashflow and working capital position of each of them;
- (c) preparing, subject to any required Regulatory Approvals, for integrating the business of Target with the business of Bidder;
- (d) understanding the operations of the business of it and its subsidiaries;

- (e) implementation of the Schemes; and
- (f) any other purpose which is agreed in writing between the parties.

6.5 **Access to Bidder**

Between the date of this document and the Implementation Date, Bidder must provide, and must procure that the other members of the Bidder Group provide, Target and its officers and advisers with reasonable access to their officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws and in accordance with any information exchange protocol agreed between the parties) which Target reasonably requires for the purposes of:

- (a) applying for all relevant Regulatory Approvals;
- (b) implementation of the Schemes; and
- (c) any other purpose which is agreed in writing between the parties.

6.6 **Change of control provisions**

As soon as practicable after the date of this document, Target and Bidder must seek to identify any change of control or unilateral termination rights in the material contracts that are agreed between the parties on or prior to the date of this document to which Target or a member of Target Group is party which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those contracts:

- (a) the parties will agree a proposed course of action, adopting the reasonable requests of Bidder, and then Target will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate, including confirmation that the counterparties will not terminate those contracts because of a change in control in Target or as a result of the implementation of the Transaction;
- (b) Target must take all reasonable action necessary to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties. Target must use reasonable endeavours to resist any requirements of landlords or contract counterparties that new or increased bank guarantees or security deposits be provided and ensure that no directors or other personal guarantees are offered or agreed to; and
- (c) Bidder must cooperate with, and provide all reasonable assistance to, Target to obtain such consents or confirmations, including by promptly providing any information reasonably required by counterparties,

provided nothing in this clause 6.6 or any other provision of this agreement requires Bidder to agree to any new conditions or to provide any new guarantees or security to a contract or lease counterparty which are not reasonably acceptable to Bidder. Nothing in this clause 6.6 requires the Bidder or the Target to incur material expenses.

6.7 **Financing arrangements**

From the date of this document up to and including the Implementation Date, Target must provide, and procure that each other member of Target Group provides such assistance as may reasonably be requested by Bidder for the purpose of Bidder refinancing or otherwise repaying the Financial Indebtedness under the Existing Financing Agreements on or after the Implementation Date, including by providing access to the financiers under the Existing Financing Agreements for that purpose and all such information in respect of the Existing Financing Agreements as may reasonably be requested by Bidder for that purpose.

6.8 Information on representations and warranties

From the date of this document and up to and including the Implementation Date each party must promptly give to the other parties details of any matter or occurrence which might reasonably make any representation or warranty given under this document by the first-mentioned party inaccurate in a material respect.

6.9 Information provided subject to confidentiality obligation

All information provided under or in connection with this document is subject to the terms of the Confidentiality Deed which continues to have full force and effect.

7. DIRECTORS AND EMPLOYEES

7.1 Board recommendation and Voting Intention

- (a) Target must use its best endeavours to procure that the Announcement, the Scheme Booklet and each public statement made by Target in relation to the Transaction state that each Target Director:
- (i) considers the Schemes and, in respect of Structure A Scheme only the Share Sale, to be in the best interest of Target Shareholders and that the Target Board recommends that Target Shareholders vote in favour of the Schemes and the Share Sale (**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 Schemes and, in respect of Structure A Scheme only the Share Sale, to the extent those Target Shares are entitled to be voted on the relevant Scheme and the Share Sale (**Voting Intention**),

in each case qualified only by words to the effect of:

- (iii) *'in the absence of a Superior Proposal'*;
- (iv) prior to registration by ASIC of the Scheme Booklet: *'subject to the Independent Expert concluding that the Schemes are in the best interest of Target Shareholders and, in respect of Structure A Scheme only, the Share Sale is either fair and reasonable or not fair but reasonable to Target Shareholders (other than the Excluded Shareholder)'*; and
- (v) from registration by ASIC of the Scheme Booklet (including in any statements related to the Recommendation and Voting Intention in the Scheme Booklet): *'subject to the Independent Expert continuing to conclude that the Schemes are in the best interest of Target Shareholders and, in respect of Structure A Scheme only, the Share Sale is either fair and reasonable or not fair but reasonable to Target Shareholders (other than the Excluded Shareholder)'*.

This obligation is subject to clause 7.1(b)(ii).

- (b) Target must use its best endeavours to procure that the Target Board collectively, and individually, do not change, withdraw or modify its, his or her Recommendation or Voting Intention unless:
- (i) Target has received, other than as a result of a breach of clause 9, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Target, an announcement has been made which attracts section 631(1) of the Corporations Act;

- (ii) in the case of a Target Director who is not an Independent Director, that Director has received written legal advice that they should abstain from making a Recommendation (and then, only to the extent of abstaining from making that Recommendation) or the change or withdrawal, modification occurs because of a requirement or request by a court or Government Agency that the Target Director abstain or withdraw from making the Recommendation or Voting Intention; or
- (iii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Schemes are not in the best interest of Target Shareholders and, in respect of Structure A Scheme only, the Share Sale is not fair and not reasonable to Target Shareholders (other than the Excluded Shareholder) (and in such case, any change of recommendation must be limited to only the relevant Scheme or Share Sale in respect of which the Independent Expert has determined to be not in the best interest of Target Shareholders),

and Target has complied with its obligations under clauses 9 and 10 (including ensuring that all of Bidder's rights under clause 10.2 have been exhausted).

- (c) Without limiting the operation of the preceding provisions of this clause 7, if circumstances arise, including the receipt or expected receipt of an unfavourable report from the Independent Expert (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) which may lead to any one or more Target Directors changing, withdrawing or varying his or her Recommendation or Voting Intention, Target must:
 - (i) immediately notify Bidder of this fact; and
 - (ii) consult with Bidder in good faith for two Business Days after the date on which the notice under clause 7.1(c)(i) is given to consider and determine whether there are any steps that can be taken to avoid such a change, withdrawal or variation (as applicable).

7.2 Confirmation

Target represents and warrants to Bidder that each Target Director has confirmed;

- (a) that he or she intends to make the Recommendation and the Voting Intention; and
- (b) his or her agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention),

other than in the circumstances referred to in clause 7.1(b).

7.3 Release of Target and Target directors and officers

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

- (a) any breach of any representations and warranties of Target or any other member of Target Group in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.3 limits Bidder's rights to terminate this document under clause 13.

7.4 Benefit for Target Indemnified Parties

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

7.5 Release of Bidder and Bidder directors and officers

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

- (a) any breach of any representations and warranties of Bidder or any other member of Bidder Group in this document; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits Bidder's rights to terminate this document under clause 14.

7.6 Benefit for Bidder Indemnified Parties

Bidder receives and holds the benefit of clause 7.5 to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

7.7 Resignation of directors

Subject to provision of the Scheme Consideration to the Scheme Shareholders in accordance with the Structure A Scheme or Structure B Scheme (as applicable), Target must procure that, with effect on and from the Implementation Date:

- (a) those persons nominated by Bidder are appointed to the Target Board and the boards of other members of the Target Group, provided that:
 - (i) such persons sign consents to act as a director of the relevant member(s) of the Target Group; and
 - (ii) such consents to act are provided to Target before the Implementation Date; and
- (b) those Target directors and directors of other members of the Target Group, as nominated by Bidder, resign as a director of the relevant member(s) of the Target Group provided that:
 - (i) nothing in this clause 7.7(b) requires any such director to forego any rights they may have under any deed of access and indemnity or policy of directors and officers insurance; and
 - (ii) a duly constituted board remains in existence in accordance with the Corporations Act.

7.8 **Directors' and officers' insurance**

Subject to the Structure A Scheme or Structure B Scheme (as applicable) becoming Effective and subject to the Corporations Act, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:

- (a) for a period of 7 years from the Implementation Date, take no step to seek to change the rules as are contained in the constitutions of Target and each other member of the Target Group at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company;
- (b) seek to maintain Target's directors' and officers' insurance cover at current levels and on current terms; and
- (c) take no step to seek that Target and each other member of the Target Group does not comply with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.

7.9 **Benefit of undertaking for Target Group**

Target acknowledges that it receives and holds the benefit of clause 7.8 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

8. **ANNOUNCEMENT**

8.1 **No Announcement**

No party may make an Announcement relating to the subject matter of this document or its termination or make public this document (or any of its terms) unless the Announcement or publication:

- (a) is required by this document;
- (b) has the prior approval of the other party; or
- (c) is required to be made by any applicable law or the ASX Listing Rules.

8.2 **Notice of Announcement**

If a party is required to make an Announcement under clause 8.1(c), it must, to the extent practicable without that party breaching any applicable law or ASX Listing Rule, give to the other parties:

- (a) such notice as is reasonable in the circumstances of its intention to make the Announcement; and
- (b) a draft of the Announcement and an opportunity, to the extent practicable in the circumstances, to comment on the contents of the draft Announcement.

9. **EXCLUSIVITY**

9.1 **No existing discussions**

Target represents and warrants to Bidder that, as at the date of this agreement:

- (a) Target is not a party to any agreement or arrangement with any third party entered into for the purposes of facilitating a Competing Proposal;

- For personal use only
- (b) Target is not, directly or indirectly, participating in any discussions or negotiations with a third party that concern, or that could be reasonably expected to lead to, a Competing Proposal;
 - (c) any due diligence access granted to any third party for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated; and
 - (d) any third party to whom non-public information in relation to the Target Group has been provided or made available in the previous 24 months for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal, has been requested to immediately return or destroy that non-public information in accordance with the provisions of any confidentiality agreement with such third party.

9.2 **No-shop**

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

- (a) solicits, invites, encourages or initiates any enquiries, expressions of interest, offers, proposals, negotiations or discussions with any person (other than any member of the Bidder Group); or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal.

9.3 **No-talk**

Subject to clause 9.4, during the Exclusivity Period, Target must ensure that neither it, nor any member of Target Group nor any of its Representatives:

- (a) negotiates, discusses, accepts or enters into; or
- (b) participates in negotiations or discussions with, or enters into any arrangement or understanding with any other person regarding,

in relation to, or that may reasonably be expected to encourage or lead to, an actual or potential Competing Proposal, or otherwise facilitates a Competing Proposal, or announces or communicates to any person any intention to do any of these things, even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Proposal.

9.4 **No due diligence**

Subject to clause 9.5, during the Exclusivity Period, Target must ensure that neither it, any nor member of Target Group nor any of its Representatives:

- (a) solicits, invites, initiates or encourages, or facilitates or permits, any person (other than Bidder) to undertake due diligence investigations in respect of Target Group, any of its businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating,

developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or

- (b) makes available to any person (other than Bidder) or permit any such person to receive any non-public information relating to Target Group, any of its businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

9.5 **Exceptions**

The restrictions in clauses 9.3 and 9.4 do not:

- (a) apply in respect of a Competing Proposal where:
 - (i) there has not been any breach of clause 9.1 in respect of that Competing Proposal; and
 - (ii) the Target Board, acting in good faith and after receiving written advice from Target's financial and legal advisers, determines that such Competing Proposal is, or may reasonably be expected to constitute, a Superior Proposal if it were proposed and that failing to respond to such Competing Proposal would be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of the Target Board; or
- (b) prevent Target disclosing non-public information to its auditors or advisers, or a Government Agency or regulatory body in the ordinary course of its business or as required under Target's existing contractual obligations provided it is not done in a manner which is intended to circumvent the intent of clause 9.

9.6 **Further exceptions**

For the avoidance of doubt, nothing in this document prevents Target from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
- (b) fulfilling its continuous disclosure requirements.

9.7 **Legal advice**

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

10. **NOTIFICATION AND MATCHING RIGHTS**

10.1 **Initial notification**

- (a) If, during the Exclusivity Period:
 - (i) Target or any of its related bodies corporate or Representatives receives a Competing Proposal or is approached by a person in relation to a Competing Proposal; or
 - (ii) Target takes any action in reliance on the exception in clause 9.5(a) ,

Target must as soon as reasonably practicable (and in any event within 48 hours of receiving that Competing Proposal):

- For personal use only
- (iii) give Bidder an Approach Notice and the Identifying Details of the person(s) who has made the Competing Proposal; and
 - (iv) disclose the Identifying Details to Bidder on a confidential basis except that Target may withhold any part of the Identifying Details from disclosure if the Target Board, acting in good faith and on the basis of written advice from its external legal advisers, determines that giving those details to Bidder would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Target Board.
- (b) If Target is entitled under clause 10.1(a)(iv) to withhold any part of the Identifying Details, Target must, as soon as reasonably practicable after:
- (i) receiving the Competing Proposal, use reasonable endeavours to obtain the consent of the person(s) who has made the Competing Proposal to disclose to Bidder on a confidential basis the person's Identifying Details; and
 - (ii) receiving consent under clause 10.1(b)(i), disclose to Bidder on a confidential basis the person's Identifying Details.

10.2 Matching right

- (a) If the Target Board determines that a Competing Proposal is a Superior Proposal, Target must as soon practicable (and in any event within 48 hours of making that determination) give Bidder the Matching Right Notice.
- (b) During the three Business Day period starting from the time that Target gives Bidder the Matching Right Notice (**Matching Period**):
 - (i) Target must not enter into, or agree to enter into, any binding documentation to give effect or implement the Competing Proposal;
 - (ii) Target must use its best endeavours to ensure that no Target Director makes any public statement recommending the Competing Proposal to its shareholders; and
 - (iii) Bidder may offer to amend the terms of the Scheme, this document or make an alternative proposal to Target or the Target Shareholders with a view to providing an equivalent or a superior outcome for the Target Shareholders than those offered under the relevant Competing Proposal (**Counter Proposal**).
- (c) If, during the Matching Period, Bidder makes a Counter Proposal:
 - (i) Target must use its best endeavours to procure that the Target Board considers the Counter Proposal in good faith before entering into, or agreeing to enter into, any binding documentation to give effect to or implement the Competing Proposal; and
 - (ii) if the Target Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole would provide an equivalent or superior outcome to shareholders of Target than those in the relevant Competing Proposal, then:
 - (A) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and

(B) Target must use its best endeavours to procure that each Target Director makes a public statement recommending the Counter Proposal to its shareholders.

- (d) Any material change to a Competing Proposal including any:
- (i) material change to the terms referred to in clause 10.1(a)(iii); or
 - (ii) incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or binding on the third party bidder,

will be taken to constitute a new Competing Proposal in respect of which Target must separately comply with its obligations under clauses 10.2(a) to 10.2(c) (inclusive).

11. **BREAK FEE**

11.1 **Background**

Each of Target and Bidder:

- (a) confirms its belief that the Scheme will provide significant benefits to Target, Bidder and their respective shareholders;
- (b) has requested that provisions be made in this document for the payments set out in clauses 11.2 and 11.3, in the absence of which it would not have entered into this document;
- (c) confirms its belief that it is appropriate to agree to the payment which it agrees to make under clause 11.2 or 11.3 (as applicable) in order to secure the other party's participation in the Scheme;
- (d) acknowledges that each of them has incurred, and will further incur, significant costs and expenses in connection with performing its obligations under this document and the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
- (e) the costs and expenses actually incurred by it and its subsidiaries are of such nature that they cannot accurately be ascertained; and
- (f) acknowledges that it has received external legal and financial advice in relation to this clause 11 and that the amount it has agreed to pay under this clause 11 is an amount which is appropriate to compensate the other party for its reasonable external and internal costs and opportunity costs in connection with the Scheme (and is a genuine and reasonable pre-estimate thereof), including for:
 - (i) reasonable advisory costs relating to the Scheme;
 - (ii) costs of management and directors' time;
 - (iii) reasonable out-of-pocket expenses relating to the Scheme; and
 - (iv) reasonable opportunity costs incurred by Bidder or Target (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which Bidder or Target (as applicable) could have developed to further its business and objectives; and
 - (v) in the case of Bidder, commitment fees and other financing costs relating to the financing of the Scheme.

11.2 Payment by Target to Bidder

Target undertakes to pay Bidder the Target Break Fee if:

(a) **(change of recommendation or voting intention statement)** between the date of this document and prior to the End Date, any Target Director:

- (i) fails to provide their Recommendation or Voting Intention in accordance with the requirements of clause 7.1;
- (ii) withdraws or adversely modifies (including by attaching any qualifications to their Recommendation or Voting Intention (except as permitted by clause 7.1(b) and then only to the extent of abstaining from making a Recommendation), or approves, recommends or makes an announcement in support of a Competing Proposal, or announces an intention to do any of these acts; or
- (iii) makes a public statement indicating that they no longer recommend the Schemes or the Share Sale or no longer intend to vote in favour of the Schemes or the Share Sale at the Scheme Meeting and General Meeting,

except where:

- (iv) in the case of a Target Director who is not an Independent Director, they receive written legal advice that they are precluded from providing the Recommendation or Voting Intention or the change, withdrawal or modification occurs because of a requirement or request by a court or Government Agency that the Target Director abstain or withdraw from making the Recommendation or Voting Intention;
- (v) Target has terminated this document under clause 13:
 - (A) because any Condition set out in clause 3.4 will not be fulfilled;
 - (B) because Bidder is in material breach of this document; or
 - (C) because of the Effective Date not occurring by the End Date; or
- (vi) the Independent Expert:
 - (A) concludes (either in its initial Independent Expert's Report or in any written update, revision, amendment, addendum or supplementary reports to it) that the Schemes are not in the best interests of Target Shareholders; or
 - (B) withdraws its Independent Expert's Report prior to 5:00 pm on the day before the Second Court Date,

in either case, other than where the conclusion or withdrawal is due (where in whole or part) to the existence, announcement or publication of a Superior Proposal.

(b) **(Competing Proposal)** either:

- (i) during the Exclusivity Period, Target accepts or enters into, or offers to accept or enter into, any agreement, arrangement or understanding to give effect to or implement a Competing Proposal; or

- (ii) prior to the End Date, a Competing Proposal is announced, made or becomes open for acceptance and within six months after the End Date (regardless of whether this document is terminated before or after the End Date) under that Competing Proposal the relevant bidder substantially completes the Competing Proposal.
- (c) **(Target breach)** Target is in material breach of any provision of this document and this document is terminated by Bidder in accordance with clause 14.1(d).

11.3 Payment by Bidder to Target

Bidder undertakes to pay Target the Bidder Break Fee if:

- (a) **(Bidder breach)** Bidder is in material breach of this document and this document is terminated by Target in accordance with clause 14.1(d); or
- (b) **(withdrawal of support)** Target terminates this document in accordance with clause 14.3(a).

11.4 Demand for payment

- (a) If an event referred to in clause 11.2 or 11.3 occurs, any demand by Bidder or Target for payment under clause 11.2 or 11.3 must be in writing and the other party must pay the amount referred to in clause 11.2 or 11.3 (as applicable) within 10 Business Days of receipt of the demand.
- (b) Bidder acknowledges and agrees that if an amount is paid to it under clause 11.2, that payment constitutes its sole and exclusive remedy in respect of the matter giving rise to the payment.

11.5 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event referred to in clause 11.2 or 11.3, if the Scheme becomes Effective:

- (a) no amount is payable under clause 11.2 or 11.3; and
- (b) if any amount has already been paid under either clause 11.2 or 11.3, it must be refunded by the party to which it was paid.

11.6 Other Claims

- (a) The maximum aggregate amount that Target is required to pay in relation to this document (including any breach of this document) is the Target Break Fee and in no event will the aggregate liability of Target in connection with this document exceed the Target Break Fee.
- (b) Notwithstanding any clause in this document, if an amount is paid by Target under clause 11.2, that amount is received by Bidder in complete settlement of any and all Claims that Bidder may have against Target in respect of the Schemes or in connection with this document.

11.7 Compliance with law

- (a) If the Takeovers Panel or a court of competent jurisdiction determines that an amount paid or payable under clause 11.2 is an Impugned Amount and:
- (i) the period for lodging an application for review or a notice of appeal of that decision has expired without such application or notice having been lodged; or
 - (ii) an application for review or a notice of appeal has been lodged with the Takeovers Panel or a court within the prescribed period and the relevant review panel or court also determines that the amount is an Impugned Amount,
- then:
- (iii) the undertaking under clause 11.2 (as applicable) does not apply to the extent of the Impugned Amount; and
 - (iv) if a party has been paid an Impugned Amount under this document, it must refund that Impugned Amount to the other party.
- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a court of competent jurisdiction for or in relation to a declaration or other order that an amount paid or payable under clause 11.2 is an Impugned Amount.

12. REPRESENTATIONS AND WARRANTIES

12.1 General representations and warranties

Each party represents and warrants to the other parties that:

- (a) **(status)** it is a validly existing corporation registered under the laws of its place of registration;
- (b) **(power)** it has full legal capacity and power to enter into this document, comply with its obligations under it and carry out the transactions that this document contemplates in accordance with its terms;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise it entering into this document and carrying out the transactions that this document contemplates in accordance with its terms;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that this document contemplates in accordance with its terms;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; and
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any such Authorisation is subject;
- (e) **(document effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;

- (f) **(no contravention)** neither its execution of this document nor the carrying out by it of the transactions that it contemplates in accordance with its terms, does or will contravene:
- (i) any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) any Authorisation held by it;
 - (iii) any undertaking or instrument binding on it or any of its property; or
 - (iv) its constitution;
- (g) **(no Insolvency Event)** neither it nor any of its subsidiaries is affected by an Insolvency Event;
- (h) **(not representative capacity)** it is not entering into this document as trustee of any trust or settlement or otherwise in a representative capacity; and
- (i) **(information provided to the Independent Expert)** all information provided by it to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.

12.2 Target representations and warranties

Target represents and warrants to Bidder that:

- (a) **(Target Due Diligence Information not false or misleading)** to Target's knowledge, Target has not knowingly or recklessly:
- (i) omitted anything from the Target Due Diligence Information that would make any part of that information materially false or misleading; or
 - (ii) included anything materially false or misleading in the Target Due Diligence Information.
- (b) **(Scheme Booklet not false or misleading)** to Target's knowledge, as at the date of despatch of the Scheme Booklet, the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) will not contain any material statement which is false or misleading (including because of any material omission);
- (c) **(continuous disclosure)** Target is not in breach of its continuous disclosure obligation under ASX Listing Rule 3.1 and, except for information contained in the Announcement to be made in accordance with clause 5.1(a), there is no information to which ASX Listing Rule 3.1 does not apply because of ASX Listing Rule 3.1A;
- (d) **(complied with applicable laws)** other than as Disclosed, Target and its wholly owned subsidiaries have complied in all material respects with all applicable laws and the ASX Listing Rules;
- (e) **(securities)** Target's issued securities as at the date of this document are:
- (i) 109,872,959 Target Shares; and
 - (ii) 642,548 Target Performance Rights,

and there are no other Target options, performance rights, shares, convertible notes or other securities and Target is not under any actual or contingent obligation to issue, convert or cancel any securities;

- (f) **(no default)** neither Target nor any Target Group Member is in:
- (i) default under any document or agreement binding on it; and
 - (ii) nothing has occurred, with the giving of notice or lapse of time (or otherwise), which would result in a liability, acceleration of an obligation or diminution in value of an asset, of \$3,000,000 or more; and
- (g) **(disputes)** neither Target nor any Target Group Member is a party to any litigation, arbitration, mediation, conciliation or administrative proceedings which are taking place, pending or, to its knowledge, threatened which, if adversely decided, could reasonably be expected to result in a liability, acceleration of an obligation or diminution in value of an asset, of \$3,000,000 or more.

12.3 Bidder and Bidder Guarantor representations and warranties

Each of Bidder and Bidder Guarantor represents and warrants to Target that:

- (a) **(no false or misleading statement)** to the knowledge of each of Bidder and Bidder Guarantor, as at the date of despatch of the Scheme Booklet, the Bidder Information will not contain any material statement which is false or misleading (including because of any material omission);
- (b) **(Bidder Information)** the Bidder Information:
 - (i) will be provided to Target in good faith and on the understanding that Target and each other Target Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Schemes;
 - (ii) will not be misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission or otherwise; and
 - (iii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, RG 60, RG 74 and the ASX Listing Rules;
- (c) **(new information)** each will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the Meeting Date which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission);
- (d) **(no other approvals necessary)** to the knowledge of each of Bidder and Bidder Guarantor, no consents, approvals or other acts by a Government Agency are necessary to effect Implementation other than the Regulatory Approvals;
- (e) **(availability of funding on Second Court Date)** by 8.00 am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Structure A Scheme or the Structure B Scheme (as applicable) and the relevant Deed Poll; and

- (f) **(availability of funding on Implementation Date)** Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Structure A Scheme or the Structure B Scheme (as applicable) and the relevant Deed Poll.

12.4 **No representations made on economic or future matters**

Each party acknowledges and agrees that the other parties make no representation or warranty other than as set out in this clause 12 and, in particular, at no time has the other party made or given any representation or warranty in relation to the achievability of:

- (a) any economic, fiscal or other interpretations or evaluations by it; or
- (b) future matters, including future or forecast costs, prices, revenues or profits.

12.5 **Reliance on representations and warranties**

Each party acknowledges that the other parties have executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made by it in clauses 12.1 to 12.3 (inclusive), as applicable.

12.6 **When warranties are given**

Unless expressly stated otherwise, each representation and warranty is given at the date of this document and again at 8:00 am on the Second Court Date.

12.7 **Indemnities by Bidder**

Bidder and Bidder Guarantor each indemnify Target and members of the Target Group and their respective directors, officers and employees against, and must pay on demand, any Loss or Claim arising from or incurred in connection with a breach of a representation and warranty in clause 12.1 or 12.3, to the fullest extent permitted by law.

12.8 **Qualifications on Target's representations and warranties**

The Target representations and warranties in clauses 12.1 and 12.2 are each subject to matters that:

- (a) have been Disclosed; or
- (b) are within the knowledge of:
 - (i) any director or secretary of Bidder or a Bidder Group member; or
 - (ii) any of the Bidder Group's Representatives who have been involved in the assessment and/or negotiation of the Schemes before the date of this document. Survival of representations and warranties

Each representation and warranty:

- (c) is severable;
- (d) survives termination of this document; and
- (e) 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 document.

12.9 **Survival of indemnities**

Each indemnity in this document:

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

13. **GUARANTEE BY BIDDER GUARANTOR**

13.1 **Guarantee and indemnity**

For valuable consideration, Bidder Guarantor:

- (a) unconditionally and irrevocably guarantees to Target, on demand, the due and punctual performance by Bidder of all its obligations contained in, or implied under, this document; and
- (b) as a separate and additional liability, indemnifies Target against, on demand, and pays to Target full amount of, all Losses and Claims which may be incurred by, or brought, made or recovered against, Target as a result of any default or delay by Target in the due and punctual performance of its obligations under this document.

13.2 **Principal obligations**

The obligations of Bidder Guarantor under this clause 13 are absolute, unconditional and irrevocable and:

- (a) are principal obligations of Bidder Guarantor and not ancillary or collateral to any other right or obligation;
- (b) may be enforced against Bidder Guarantor without Target first being required to exhaust any remedy it may have against Bidder; and
- (c) extend to cover this document as amended, varied or replaced, whether with or without the consent of Bidder Guarantor.

13.3 **Continuity**

This clause 13 is a continuing guarantee and indemnity and remains in full force and effect for so long as Bidder has any liability or obligation to the Target under this document and until all those liabilities and obligations are fully discharged.

13.4 **Liability unaffected by other events**

The liability of Bidder Guarantor under this clause 13 extends to and is not affected by, any circumstance, act or omission which, but for this provision, might otherwise affect it at law or in equity including, whether with or without the consent of Bidder Guarantor:

- (a) the grant to Bidder or any other person of any time, waiver or other indulgence or concession;
- (b) the discharge or release of Bidder or any other person from any liability or obligation;

- For personal use only
- (c) any transaction or arrangement that may take place between Target and Bidder or any other person;
 - (d) a change in the constituent documents, membership or partnership of a person;
 - (e) the occurrence of an Insolvency Event in relation to Bidder or any other person;
 - (f) Target exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against Bidder or any other person;
 - (g) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer (whether in whole or in part and with or without consideration) of any security now or in the future held by Target from Bidder or any other person or by the taking of or failure to take any security;
 - (h) any failure, omission or delay by the Target or Bidder to give notice to Bidder Guarantor of any default by Bidder or any other person under this document; and
 - (i) any legal limitation, disability, incapacity or other circumstances related to Bidder or any other person.

13.5 **Variation of rights and cumulative remedies**

- (a) The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.
- (b) The rights, powers and remedies provided to the Target in this clause 13 are cumulative and not exclusive of any rights, powers or remedies provided at law or in equity or by any agreement.

13.6 **No withholdings**

Bidder Guarantor must make all payments which may be or become due under this clause 13 free and clear, and without deduction, of all present and future withholdings (including Taxes of Australia or any other jurisdiction) unless compelled by law. If Bidder Guarantor is compelled by law to deduct any withholding, it must pay to the Target an amount equal to the withholding in addition to any payment due under this clause 13.

13.7 **Currency**

All moneys which Bidder Guarantor is liable to pay to Target under this clause 13 are due and payable in the currency in which they are payable under this document. All payments are to be free of any commissions and expenses relating to foreign currency conversion or any other charge or expense.

13.8 **No set-off**

Bidder Guarantor has no right to set-off, deduct or withhold any moneys which it is liable to pay to Target under this clause 13 against any moneys which Target (or a related body corporate of the Target), is liable to pay to Bidder or Bidder Guarantor whether under this document or otherwise.

14. TERMINATION

14.1 Termination by Target or Bidder

Bidder or Target (the **Terminating Party**) may terminate this document by notice in writing to each other party if:

- (a) Bidder and Target are unable to reach agreement to do any matter listed in clause 3.10, after consulting in good faith under clause 3.10 for a period of five Business Days after both parties become aware of the occurrence of a circumstance in clause 3.10;
- (b) where the Terminating Party has not given or received notice under clause 3.12 within three Business Days after the Scheme Meeting, if the Target Shareholder Approval for both the Structure A Scheme and the Structure B Scheme is not obtained at the Scheme Meeting;
- (c) where the Terminating Party has given or received notice under clause 3.12 within three Business Days after the Scheme Meeting, any application to the Court for the Order in accordance with clause 3.12 is unsuccessful; or
- (d) at any time before 8.00 am on the Second Court Date, the other party (the **Defaulting Party**) commits a breach of this document (including a representation and warranty) and:
 - (i) the breach is material;
 - (ii) the Terminating Party has given the Defaulting Party written notice setting out the relevant circumstances giving rise to the breach, and stating an intention to terminate this document; and
 - (iii) the relevant circumstances giving rise to the breach are not remedied to the terminating party's reasonable satisfaction by the earlier of:
 - (A) five Business Days after the date of the notice given by the Terminating Party under clause (ii); or
 - (B) 5.00 pm on the Business Day before the Second Court Date.

14.2 Bidder may terminate

Bidder may terminate this document by giving notice in writing to Target at any time before 8.00 am on the Second Court Date if:

- (a) any Target Director:
 - (i) fails to provide their Recommendation or Voting Intention in accordance with the requirements of clause 7.1;
 - (ii) withdraws or adversely modifies (including by attaching any qualifications to) their Recommendation or Voting Intention, or approves, recommends or makes an announcement in support of a Competing Proposal, or announces an intention to do any of these acts; or
 - (iii) makes a public statement indicating that they no longer recommend the Schemes or the Share Sale or no longer intends to vote in favour of the Schemes or the Share Sale at the Scheme Meeting and General Meeting,

except where the relevant Target Director abstains from making a Recommendation as contemplated by clause 7.1(b)(ii); or

- (b) Target or any of its directors acts in a manner which is inconsistent with obtaining approval for the Schemes (including by recommending, approving or making an announcement in support of a Competing Proposal), subject to the exception in clause 14.2(a).

14.3 **Target may terminate**

Target may terminate this document by giving notice in writing to Bidder at any time before 8.00 am on the Second Court Date if:

- (a) any of Bidder's directors publicly withdraws their support for the Schemes; or
- (b) the Target Board publicly recommends a Superior Proposal, having followed the process set out in clause 10.

14.4 **Obligations on termination**

- (a) If a party terminates this document, all obligations of the parties under this document, other than this clause 14, clauses 7.1 (Release of Target and Target directors and officers), 8 (Announcements), 12 (Representations and warranties), 13 (Guarantee by Bidder Guarantor), 15 (GST), 17 (Notices), 18 (Amendment and Assignment) and 19 (General), immediately cease to be of further effect.
- (b) The termination of this document does not affect any Claim that a party may have against another party where that Claim arose before this document is terminated.

14.5 **Notice of termination**

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

14.6 **Remedies**

- (a) The parties acknowledge and agree that damages may not be a sufficient remedy for breach of this document. 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 document by any party, notwithstanding the ability of any party to terminate this document or seek damages for such a breach or threatened breach.
- (b) To avoid doubt, clause 14.6(a) is subject to clause 11.6.

15. **GST**

15.1 **GST pass on**

If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount for GST on the supply:

- (a) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the

consideration has already been paid or provided, within seven days of receiving a written demand from the supplier.

15.2 Tax Invoice

The right of the supplier to recover any amount in respect of GST under this document on a supply is subject to the issuing of the relevant tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice or adjustment note.

15.3 Consideration exclusive of GST

Any consideration otherwise provided for a supply or payment obligation in connection with this document is exclusive of GST unless stated otherwise.

15.4 Adjustments

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event except where the recipient is required to issue an adjustment note or tax invoice in relation to the supply.

15.5 Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party, or used as the basis for calculation of consideration for a supply, under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

16. COSTS

16.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 16.2.

16.2 Stamp duty and registration fees

Bidder:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and

- (b) indemnifies Target against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 16.2(a).

Bidder agrees to pay amounts due to Target under this clause within 3 Business Days of demand from Target.

17. NOTICES

17.1 How to give a notice

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing;
- (b) addressed to the person to whom it is to be given in accordance with clause 17.3;
- (c) signed by the sender or includes the sender's full name where sent by e-mail; and
- (d) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by e-mail to that person's e-mail address.

17.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting; and
- (b) if sent by e-mail, the earlier of:
 - (i) when the sender receives an automated message confirming delivery;
 - (ii) a reply from the recipient; or
 - (iii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed.

17.3 Address for notices

A person's address and fax number are those set out below, or as the person notifies the sender:

Target

Address: Level 13, 188 Collins Street, Hobart Tasmania Australia 7000
Email: pwiese@huonacqua.com.au
Attention: Philip Wiese

with a copy to:

Address: Level 16, 80 Collins Street Melbourne VIC 3000
Email: john.brewster@ashurst.com
Attention: John Brewster, Partner

Bidder

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au
Attention: Edison Alvares and Jacinta Dale

with a copy to:

Address: MinterEllison
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

Bidder Guarantor

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au
Attention: Edison Alvares and Jacinta Dale

with a copy to:

Address: MinterEllison
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

17.4 **Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 17.3 or with its process agent.

18. **AMENDMENT AND ASSIGNMENT**

18.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

18.2 **Assignment**

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the prior written consent of the other parties.

19. **GENERAL**

19.1 **Governing law**

(a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws of the State of Victoria, Australia.

- (b) Each party submits to the non-exclusive jurisdiction of the courts of that State, and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this document. Each party irrevocably waives any right it has to object to any legal process being brought in those courts including any claim that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

19.2 Giving effect to this document

Each party must do anything within its power (including execute any document) that the other party may reasonably require to give full effect to this document.

19.3 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

19.4 Operation of this document

- (a) This document and the Confidentiality Deed contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these documents and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

19.5 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

19.6 Consents

Where this document contemplates that a party may agree or consent to something (however it is described), unless this document expressly contemplates otherwise, the party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions.

19.7 No merger

No provisions of this document merge on Implementation.

19.8 Counterparts

This document may be executed in counterparts.

For personal use only

SCHEDULE 1

Timetable¹

Event	Date
Lodge Scheme Booklet with ASIC and ASX	By early September 2021
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	By early September 2021
First Court Date	By late September 2021
Completion of printing and despatch of Scheme Booklet	By late September 2021
Scheme Meeting held	By late October 2021
Second Court Date	By late October 2021
Lodge Court order with ASIC (Effective Date)	By late October 2021
Record Date (Scheme and Permitted Dividend)	By early November 2021
Implementation Date (Scheme Consideration paid and Permitted Dividend paid)	By early November 2021

¹ Timetable subject to consultation with ASX.

EXECUTED as a deed.

EXECUTED by **HUON AQUACULTURE GROUP LIMITED:**



Signature of director

Neil Kearney

Name



Signature of director/secretary


Tom Haselgrove

Name

For personal use only

For personal use only

EXECUTED by JBS AUSTRALIA PTY LTD:



Signature of director

Brent Eastwood
Name



Signature of director/secretary


EDISON ALVAREZ
Name

EXECUTED by INDUSTRY PARK PTY LTD:



Signature of director

Brent Eastwood
Name



Signature of director/secretary

EDISON ALVAREZ
Name

ANNEXURE A

Scheme of Arrangement – Structure A

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Scheme of Arrangement – Structure A Scheme

Huon Aquaculture Group Limited

ACN 114 456 781

The holders of ordinary fully paid shares issued in Huon
Aquaculture Group Limited

2021

SCHEME OF ARRANGEMENT

Under section 411 of the Corporations Act

BETWEEN:

- (1) **Huon Aquaculture Group Limited** ACN 114 456 781 whose registered office is at Level 13, 188 Collins Street, Hobart TAS 7000 (**Target**); and
- (2) each Scheme Shareholder.

BACKGROUND

- (A) Target is a public company incorporated in Australia. It is registered in Tasmania and is a company limited by shares. Target is admitted to the official list of ASX and Target Shares are quoted on the stock market conducted by ASX.
- (B) JBS Australia Pty Ltd (**Bidder**) is an Australian proprietary company limited by shares. Industry Park Pty Ltd (**Bidder Guarantor**) is an Australian proprietary company limited by shares.
- (C) Target, Bidder and Bidder Guarantor entered into the Scheme Implementation Deed on or about 6 August 2021 to facilitate the implementation of the Scheme. The Independent Directors have proposed the Scheme to Target Shareholders.
- (D) Bidder and Bidder Guarantor have each executed the Deed Poll under which they covenant in favour of the Scheme Shareholders to carry out their obligations under the Scheme, including to provide the Scheme Consideration in accordance with the terms of the Scheme.
- (E) If the Scheme becomes Effective:
 - (1) in consideration of the transfer of the Scheme Shares to Bidder, Bidder must provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme and the Deed Poll;
 - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder; and
 - (3) Target will enter Bidder's name in the Register as the holder of all the Scheme Shares.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Hobart, Tasmania, Melbourne, Victoria, and Brisbane, Queensland, Australia.

CHES means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited, which provides for the electronic transfer, settlement and registration of securities.

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

Court means the Federal Court of Australia, Melbourne division, or such other court of competent jurisdiction under the Corporations Act as agreed in writing by Bidder and Target.

Deed Poll means the deed poll executed by Bidder and Bidder Guarantor in favour of the Scheme Shareholders dated [insert].

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

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

End Date has the meaning given in the Scheme Implementation Deed.

Excluded Shareholder means Surveyors Investments Pty Ltd ACN 602 004 179.

Independent Directors means Neil Kearney, Simon Lester, and Tony Dynon.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Target.

Implementation means the implementation of the Scheme, on it becoming Effective.

Implementation Date has the meaning given in the Scheme Implementation Deed.

Independent Expert's Report means a report prepared by the Independent Expert in respect of the Scheme in accordance with ASIC Regulatory Guide 111.

Permitted Dividend has the meaning given in the Scheme Implementation Deed.

Record Date means 5:00 pm on the day which is five Business Days after the Effective Date or any other date (after the Effective Date) agreed by Bidder and Target to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Register means the register of members of Target and **Registry** has a corresponding meaning.

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

Scheme means this scheme of arrangement between Target and Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act as described in clause 4.1 of this Scheme, in consideration for the Scheme Consideration, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act to the extent they are approved in writing by Target Bidder and Bidder Guarantor.

Scheme Consideration means the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$3.85 per Scheme Share, less the amount per Scheme Share of any dividend (including a Permitted Dividend) declared, determined or paid by Target prior to the Implementation Date.

Scheme Implementation Deed means the Scheme Implementation Deed between Bidder, Bidder Guarantor and Target dated 6 August 2021 relating to the implementation of the Scheme.

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

Scheme Shareholder means each Target Shareholder (other than the Excluded Shareholder) at the Record Date, taking into account registration of all registrable transfers and transmission applications in accordance with clause 6.1.

Scheme Share means each Target Share on issue as at the Record Date, excluding the Target Shares held by the Excluded Shareholder.

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

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

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

Target Shareholder means each person entered in the Register as a holder of Target Shares.

Trust Account means the trust account operated by or on behalf of Target to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the relevant Scheme Shareholders in accordance with clause 5.2 of this Scheme.

1.2 Rules for interpreting this document

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.

- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **officer, related body corporate** and **security interest** have the same meaning as given by the Corporations Act.
- (g) A reference to **\$** or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) All references to time in this document are references to Melbourne.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the previous Business Day.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions precedent to the Scheme**

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

- (a) all the conditions set out in clauses 3.2 to 3.4 (inclusive) of the Scheme Implementation Deed, other than the Conditions in clauses 3.2(d) and 3.2(e) of the Scheme Implementation Deed, having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with its terms before 8:00am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Bidder and Target having accepted (each acting reasonably) in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to this Scheme.

2.2 **Certificate in relation to conditions precedent**

Each of Target and Bidder must provide to the other and to the Court before commencement of the hearing by the Court of the application for the order under section 411(4)(b) of the Corporations Act, a certificate or such other evidence as the Court requests, confirming whether or not the Conditions set out in clauses 3.2 to 3.4 (inclusive) of the Scheme Implementation Deed included for its benefit, other than the Conditions in clauses 3.2(d) and 3.2(e), have been satisfied (or waived by it) in accordance with the terms of the Scheme Implementation Deed.

3. THE SCHEME

3.1 Effective Date

- (a) If the conditions precedent in clause 2.1 are satisfied or waived, Target must lodge with ASIC an office copy of the order of the Court approving the Scheme under section 411(4)(b) of the Corporations Act and by no later than the first Business Day after the day on which the Court makes that order.
- (b) Subject to clause 3.2, the Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.2 End Date

The Scheme will lapse and be of no effect if the Effective Date has not occurred on or before the End Date.

3.3 Termination

Without limiting any rights under the Scheme Implementation Deed, if the Scheme Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective, each of Target and Bidder is released from:

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

4. IMPLEMENTATION OF THE SCHEME

4.1 Implementation steps

- (a) Subject to this Scheme becoming Effective, Bidder will provide or procure the provision of the Scheme Consideration in the manner contemplated by clause 5.
- (b) On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 5 and Bidder having provided Target with written confirmation of the provision of Scheme Consideration, all the Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, will be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by Target or its directors and officers as attorney and agent for the Scheme Shareholders under this Scheme), by:
 - (i) Target effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act; or
 - (ii) if the procedure referred to in subclause 1.1(b)(i) is not available for any reason in respect of any Scheme Shares by:
 - (A) Target delivering to Bidder for execution duly completed Scheme Transfers to transfer the Scheme Shares to Bidder, duly executed by Target or any of its directors and officers as the attorney and agent of each Scheme Shareholder as transferor;
 - (B) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and
 - (C) Target, immediately after receipt of the Scheme Transfers under subclause (B), entering or procuring entry of the name and address of Bidder in the Register as the holder of all the Scheme Shares.

4.2 **Title and rights in Scheme Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 5 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.

5. **SCHEME CONSIDERATION**

5.1 **Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

5.2 **Consideration under the Scheme**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, Bidder must provide or procure the provision of (and Target must use its best endeavours to procure that Bidder provides) the Scheme Consideration to the Scheme Shareholders in accordance with this clause 5.

5.3 **Satisfaction of obligations to pay Scheme Consideration**

The obligation of Bidder to pay the Scheme Consideration pursuant to clause 5.2 of this Scheme will be satisfied by Bidder making, no later than 1 Business Day before the Implementation Date, a deposit (or procuring the deposit) in Immediately Available Funds of the aggregate amount of the Scheme Consideration payable to all relevant Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account). For the avoidance of doubt, Bidder must make the deposit referred to in this clause 5.3 (or procure the making of the deposit referred to in this clause 5.3), in full without any withholding or deduction in respect of or on account of taxes (including, for the avoidance of doubt, any amount required to be paid by Bidder to the Australian Taxation Office under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**)), unless the withholding, or deduction, or the payment of such taxes or amounts by Bidder, is required by law.

5.4 **Payment of Scheme Consideration**

- (a) On the Implementation Date, subject to receipt of the Scheme Consideration from Bidder, Target must pay or procure the payment to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by that Scheme Shareholder as at the Record Date.
- (b) Unless otherwise directed by a Scheme Shareholder before the Record Date, the Scheme Consideration required to be paid under clause 1.1(a) of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each relevant Scheme Shareholder by pre-paid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5:00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 5.8).

5.5 **Foreign resident capital gains withholdings**

- (a) Subject to clause 5.5(c), if Bidder is required by law to pay an amount to the Commissioner of Taxation under Subdivision 14-D in respect of the acquisition of Scheme Shares from a Scheme Shareholder (the **Relevant Amount**), then Bidder

shall be entitled to withhold an amount, in Australian dollars, equal to the amount of the Relevant Amount from the amount otherwise required to be paid into the Trust Account under clause 5.3 (**Withholding Amount**) and payment of the reduced amount (being the Scheme Consideration less the Withholding Amount) by Bidder into the Trust Account in accordance with clause 5.3 or by Target to the relevant Scheme Shareholder in accordance with clause 1.1(a), will constitute the full discharge of each of Bidder's and Target's obligations under clause 5.3 and clause 1.1(a) with respect to the payment of the Scheme Consideration to the relevant Scheme Shareholder, subject to Bidder paying the Withholding Amount to the relevant taxation authority and providing evidence of the payment in accordance with clause 5.50.

- (b) Bidder must pay any Withholding Amount so withheld to the relevant taxation authority in accordance with and in the time required by law, and must, as soon as practicable after doing so, provide the relevant Scheme Shareholder (or Target on behalf of the relevant Scheme Shareholder), with a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such.
- (c) The parties agree to consult (together with Target) in good faith as to the application of Subdivision 14-D in relation to the Scheme including, without limitation, as to whether sections 14-200 or 14-210(1) of Subdivision 14-D applies, or will apply, to any Scheme Shareholder. The parties agree to take all actions that they, acting reasonably, mutually agree through that consultation, are necessary or desirable in relation to the operation of Subdivision 14-D to the Scheme, and each agree to not take any unilateral action in relation to the operation of Subdivision 14-D to the Scheme in the absence of such agreement.

5.6 **Unclaimed monies**

Target may cancel a cheque issued under clause 5.4 of this Scheme if the cheque:

- (a) is returned to Target; or
- (b) has not been presented for payment within 6 months after the date on which the cheque was sent.

During the period of 1 year commencing on the Implementation Date, on request from a Scheme Shareholder, Target must reissue a cheque that was previously cancelled under this clause 5.5.

5.7 **Orders of a Court**

In the case of notice having been given to Target (or the Registry) of an order made by a Court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 5.4 of this Scheme, then Target must procure that payment is made in accordance with that order; or
- (b) which would prevent Target from dispatching payment to any particular Scheme Shareholder in accordance with clause 5.4 of this Scheme, Target may (as applicable) retain an amount, in Australian dollars, equal to the Scheme Consideration that would otherwise have been payable to that Scheme Shareholder in accordance with clause 5.4 until such time as provision of the Scheme Consideration in accordance with this Scheme is permitted by law.

5.8 **Joint holders**

In the case of Scheme Shares held in joint names:

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

5.9 **Surplus funds**

To the extent that, following satisfaction of Target's obligations under clause 5.4 there is a surplus in the amount held by Target as Trustee for the Scheme Shareholders in the Trust Account, that surplus must be paid by Target to Bidder.

6. **DEALINGS IN TARGET SHARES**

6.1 **Determination of Scheme Shareholders**

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

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as the holder of the relevant Target Shares on or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before 4:00pm on the Record Date at the place where the Register is kept,

and Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 **Register**

- (a) Target must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 1.1(b) before, on or as soon as practicable after the Record Date.
- (b) 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 Target shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from the Record Date, each entry on the Register (other than entries on the Register in respect of Bidder) will cease to have

effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

6.3 **Information to be given to Bidder**

As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Register as at the Record Date are available to Bidder in the form Bidder reasonably requires.

6.4 **Suspension of trading**

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

6.5 **Target to apply for termination of quotation of Target Shares**

On a date after the Implementation Date to be determined by Bidder, Target will apply for termination of the official quotation on the stock market conducted by ASX of Target Shares and to have itself removed from the official list of ASX.

7. **GENERAL PROVISIONS**

7.1 **Appointment of agent and attorney**

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints Target as its agent and attorney for the purposes of:
- (i) in the case of Scheme Shares in a CHES holding:
 - (A) causing a message to be transmitted to ASX Settlement Pty Ltd (ABN 49 008 504 532) in accordance with the ASX Settlement Rules to transfer the Scheme Shares held by the Scheme Shareholder from the CHES subregister of Target to the issuer sponsored subregister operated by Target or the Registry at any time after Bidder has provided or procured the provision of the Scheme Consideration which is due under this Scheme to Scheme Shareholders; and
 - (B) completing and signing on behalf of Scheme Shareholders any required form of transfer of Scheme Shares;
 - (ii) in the case of Scheme Shares registered in the issuer sponsored subregister operated by Target or the Registry, completing and signing on behalf of Scheme Shareholders any required form of transfer;
 - (iii) in all cases, executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including the execution of the Scheme Transfer and the giving of the Scheme Shareholder's consent under clause 7.3; and
 - (iv) enforcing the Deed Poll against Bidder and Bidder Guarantor,
- and Target accepts such appointment.
- (b) 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 and officers (jointly, severally, or jointly and severally).

7.2 **Enforcement of Deed Poll**

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

7.3 **Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably consents to Target, Bidder and Bidder Guarantor doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the Implementation and performance of this Scheme.

7.4 **Scheme Shareholders' agreements**

Under this Scheme, each Scheme Shareholder:

- (a) agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) acknowledges that upon becoming Effective this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target.

7.5 **Warranty by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to Target and Bidder that as at the Implementation Date:

- (a) to the extent permitted by law, all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares, and all rights and entitlements attaching to those Scheme Shares, to Bidder.

7.6 **Title to Scheme Shares**

- (a) Subject to this Scheme becoming Effective, immediately upon provision of the Scheme Consideration in accordance with this Scheme, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

7.7 **Appointment of sole proxy**

Subject to this Scheme becoming Effective, immediately upon provision of the Scheme Consideration in accordance with this Scheme, and until Target registers Bidder as the holder of all Scheme Shares in the Register, each Scheme Shareholder:

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend Target Shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target Shareholders' resolution;
- (b) acknowledges that no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 1.1(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred in clause 1.1(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

7.8 **Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or at the Registry as the case may be.

7.9 **Inconsistencies**

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

7.10 **No liability when acting in good faith**

None of Bidder, Target nor any director, officer, secretary or employee of Target will be liable for anything done or omitted to be done in good faith in the performance of this Scheme or the Deed Poll.

7.11 **Further assurance**

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, this Scheme.

7.12 **Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act:

- (a) Target may, by its counsel on behalf of all persons concerned, consent to only such of those conditions or alterations to this Scheme to which Bidder has consented, such consent not to be unreasonably withheld or delayed; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target has consented to.

7.13 **Stamp Duty**

Bidder must pay all stamp duties and any related fines and penalties payable on the transfer by Scheme Shareholder of the Scheme Shares to Bidder.

7.14 **Governing Law**

- (a) This Scheme is governed by and will be construed according to the laws of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and of the courts competent to determine appeals from those courts.

ANNEXURE B

Scheme of Arrangement – Structure B

For personal use only



Scheme of Arrangement – Structure B Scheme

Huon Aquaculture Group Limited

ACN 114 456 781

The holders of ordinary fully paid shares issued in Huon
Aquaculture Group Limited

2021

SCHEME OF ARRANGEMENT

Under section 411 of the Corporations Act

BETWEEN:

- (1) **Huon Aquaculture Group Limited** ACN 114 456 781 whose registered office is at Level 13, 188 Collins Street, Hobart TAS 7000 (**Target**); and
- (2) each Scheme Shareholder.

BACKGROUND

- (A) Target is a public company incorporated in Australia. It is registered in Tasmania and is a company limited by shares. Target is admitted to the official list of ASX and Target Shares are quoted on the stock market conducted by ASX.
- (B) JBS Australia Pty Ltd (**Bidder**) is an Australian proprietary company limited by shares. Industry Park Pty Ltd (**Bidder Guarantor**) is an Australian proprietary company limited by shares.
- (C) Target, Bidder and Bidder Guarantor entered into the Scheme Implementation Deed on or about 6 August 2021 to facilitate the implementation of the Scheme. The directors of Target have proposed the Scheme to Target Shareholders.
- (D) Bidder and Bidder Guarantor have each executed the Deed Poll under which they covenant in favour of the Scheme Shareholders to carry out their obligations under the Scheme, including to provide the Scheme Consideration in accordance with the terms of the Scheme.
- (E) This Scheme will only become Effective if the Structure A Scheme does not become Effective.
- (F) If the Scheme becomes Effective:
 - (1) in consideration of the transfer of the Scheme Shares to Bidder, Bidder must provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme and the Deed Poll;
 - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder; and
 - (3) Target will enter Bidder's name in the Register as the holder of all the Scheme Shares.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Hobart, Tasmania, Melbourne, Victoria, and Brisbane, Queensland, Australia.

CHES means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited, which provides for the electronic transfer, settlement and registration of securities.

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

Court means the Federal Court of Australia, Melbourne division, or such other court of competent jurisdiction under the Corporations Act as agreed in writing by Bidder and Target.

Deed Poll means the deed poll executed by Bidder and Bidder Guarantor in favour of the Scheme Shareholders dated [insert].

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

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

End Date has the meaning given in the Scheme Implementation Deed.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Target.

Implementation means the implementation of the Scheme, on it becoming Effective.

Implementation Date has the meaning given in the Scheme Implementation Deed.

Independent Expert's Report means a report prepared by the Independent Expert in respect of the Scheme in accordance with ASIC Regulatory Guide 111.

Permitted Dividend has the meaning given in the Scheme Implementation Deed.

Record Date means 5:00 pm on the day which is five Business Days after the Effective Date or any other date (after the Effective Date) agreed by Bidder and Target to be the record date to determine entitlements to receive Scheme Consideration under the Scheme.

Register means the register of members of Target and **Registry** has a corresponding meaning.

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

Scheme means this scheme of arrangement between Target and Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act as described in clause 4.1 of this Scheme, in consideration for the Scheme Consideration, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act to the extent they are approved in writing by Target Bidder and Bidder Guarantor.

Scheme Consideration means the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$3.85 per Scheme Share, less the amount per Scheme Share of any dividend (including a Permitted Dividend) declared, determined or paid by Target prior to the Implementation Date.

Scheme Implementation Deed means the Scheme Implementation Deed between Bidder, Bidder Guarantor and Target dated 6 August 2021 relating to the implementation of the Scheme.

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

Scheme Shareholder means each Target Shareholder at the Record Date, taking into account registration of all registrable transfers and transmission applications in accordance with clause 6.1.

Scheme Share means each Target Share on issue as at the Record Date.

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

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

Structure A Scheme means the scheme of arrangement between Target and Scheme Shareholders proposed at the same time as this Scheme under which all of the Scheme Shares (other than Target Shares held by Surveyors Investments Pty Ltd ACN 602 004 179) will be transferred to Bidder under Part 5.1 of the Corporations Act, in consideration for the Scheme Consideration, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act to the extent they are approved in writing by Target Bidder and Bidder Guarantor.

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

Target Shareholder means each person entered in the Register as a holder of Target Shares.

Trust Account means the trust account operated by or on behalf of Target to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the relevant Scheme Shareholders in accordance with clause 5.2 of this Scheme.

1.2 **Rules for interpreting this document**

Headings and catchwords are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The words **officer, related body corporate** and **security interest** have the same meaning as given by the Corporations Act.
- (g) A reference to **\$** or **dollar** is to Australian currency.
- (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
- (i) All references to time in this document are references to Melbourne.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this document is not a Business Day the person must do it on or by the previous Business Day.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions precedent to the Scheme**

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

- (a) all the conditions set out in clauses 3.2 to 3.4 (inclusive) of the Scheme Implementation Deed, other than the Conditions in clauses 3.2(d) and 3.2(e) of the Scheme Implementation Deed, having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with its terms before 8:00am on the Second Court Date;
- (c) the Structure A Scheme has not become effective by the Court making an order approving the Structure A Scheme under section 411(4)(b) of the Corporations Act in the circumstances referred to in clause 3.2;
- (d) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Bidder and Target having accepted (each acting reasonably) in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; 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) (and, if applicable, section 411(6)) of the Corporations Act in relation to this Scheme.

2.2 **Certificate in relation to conditions precedent**

Each of Target and Bidder must provide to the other and to the Court before commencement of the hearing by the Court of the application for the order under section 411(4)(b) of the Corporations Act, a certificate or such other evidence as the Court requests, confirming whether or not the Conditions set out in clauses 3.2 to 3.4 (inclusive) of the Scheme Implementation Deed included for its benefit, other than the Conditions in clauses 3.2(d) and 3.2(e), have been satisfied (or waived by it) in accordance with the terms of the Scheme Implementation Deed.

3. **THE SCHEME**

3.1 **Effective Date**

- (a) If the conditions precedent in clause 2.1 are satisfied or waived, Target must lodge with ASIC an office copy of the order of the Court approving the Scheme under section 411(4)(b) of the Corporations Act and by no later than the first Business Day after the day on which the Court makes that order.
- (b) Subject to clause 3.2, the Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.2 **Relationship with Structure A Scheme**

- (a) Target and Bidder must not seek an order of the Court to approve the Scheme under section 411(4)(b) of the Corporations Act unless the Structure A Scheme has not and will not become effective by order of the Court under section 411(4)(b) of the Corporations Act.
- (b) If the Conditions set out in clauses 3.2 to 3.4 (inclusive) of the Scheme Implementation Deed applicable to the Structure A Scheme (excluding the Conditions in clauses 3.2(d) and 3.2(e)) have not been satisfied (or waived) in accordance with the terms of the Scheme Implementation Deed before the Second Court Date, Target will seek an order approving the Scheme on the Second Court Date.
- (c) If the Conditions set out in clauses 3.2 to 3.4 (inclusive) of the Scheme Implementation Deed applicable to both the Structure A Scheme and the Scheme (excluding the Conditions in clauses 3.2(d) and 3.2(e)) have been satisfied (or waived) in accordance with the terms of the Scheme Implementation Deed before the Second Court Date, Target will seek an order approving the Structure A Scheme on the Second Court Date and only if the Court declines to make orders approving the Structure A Scheme under section 411(4)(b) of the Corporations Act will Target seek orders from the Court approving the Scheme under section 411(4)(b) of the Corporations Act.

3.3 **End Date**

The Scheme will lapse and be of no effect if the Effective Date has not occurred on or before the End Date.

3.4 **Termination**

Without limiting any rights under the Scheme Implementation Deed, if the Scheme Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective, each of Target and Bidder is released from:

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

4. **IMPLEMENTATION OF THE SCHEME**

4.1 **Implementation steps**

- (c) Subject to this Scheme becoming Effective, Bidder will provide or procure the provision of the Scheme Consideration in the manner contemplated by clause 5.
- (d) On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 5 and Bidder having provided Target with written confirmation of the provision of Scheme Consideration, all the Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, will be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by Target or its directors and officers as attorney and agent for the Scheme Shareholders under this Scheme), by:
 - (i) Target effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act; or
 - (ii) if the procedure referred to in subclause 1.1(d)(i) is not available for any reason in respect of any Scheme Shares by:
 - (A) Target delivering to Bidder for execution duly completed Scheme Transfers to transfer the Scheme Shares to Bidder, duly executed by Target or any of its directors and officers as the attorney and agent of each Scheme Shareholder as transferor;
 - (B) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and
 - (C) Target, immediately after receipt of the Scheme Transfers under subclause (B), entering or procuring entry of the name and address of Bidder in the Register as the holder of all the Scheme Shares.

4.2 **Title and rights in Scheme Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 5 of this Scheme, on and from the Implementation Date, Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.

5. **SCHEME CONSIDERATION**

5.1 **Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of all Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

5.2 Consideration under the Scheme

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, Bidder must provide or procure the provision of (and Target must use its best endeavours to procure that Bidder provides) the Scheme Consideration to the Scheme Shareholders in accordance with this clause 5.

5.3 Satisfaction of obligations to pay Scheme Consideration

The obligation of Bidder to pay the Scheme Consideration pursuant to clause 5.2 of this Scheme will be satisfied by Bidder making, no later than 1 Business Day before the Implementation Date, a deposit (or procuring the deposit) in Immediately Available Funds of the aggregate amount of the Scheme Consideration payable to all relevant Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account). For the avoidance of doubt, Bidder must make the deposit referred to in this clause 5.3 (or procure the making of the deposit referred to in this clause 5.3), in full without any withholding or deduction in respect of or on account of taxes (including, for the avoidance of doubt, any amount required to be paid by Bidder to the Australian Taxation Office under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**)), unless the withholding, or deduction, or the payment of such taxes or amounts by Bidder, is required by law.

5.4 Payment of Scheme Consideration

- (e) On the Implementation Date, subject to receipt of the Scheme Consideration from Bidder, Target must pay or procure the payment to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by that Scheme Shareholder as at the Record Date.
- (f) Unless otherwise directed by a Scheme Shareholder before the Record Date, the Scheme Consideration required to be paid under clause 1.1(e) of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each relevant Scheme Shareholder by pre-paid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5:00pm on the Record Date (or in the case of joint holders, in accordance with the procedures set out in clause 5.8).

5.5 Foreign resident capital gains withholdings

- (a) Subject to clause 5.5(c), if Bidder is required by law to pay an amount to the Commissioner of Taxation under Subdivision 14-D in respect of the acquisition of Scheme Shares from a Scheme Shareholder (the **Relevant Amount**), then Bidder shall be entitled to withhold an amount, in Australian dollars, equal to the amount of the Relevant Amount from the amount otherwise required to be paid into the Trust Account under clause 5.3 (**Withholding Amount**) and payment of the reduced amount (being the Scheme Consideration less the Withholding Amount) by Bidder into the Trust Account in accordance with clause 5.3 or by Target to the relevant Scheme Shareholder in accordance with clause 1.1(e), will constitute the full discharge of each of Bidder's and Target's obligations under clause 5.3 and clause 1.1(e) with respect to the payment of the Scheme Consideration to the relevant Scheme Shareholder, subject to Bidder paying the Withholding Amount to the relevant taxation authority and providing evidence of the payment in accordance with clause 5.5(b).
- (b) Bidder must pay any Withholding Amount so withheld to the relevant taxation authority in accordance with and in the time required by law, and must, as soon as practicable after doing so, provide the relevant Scheme Shareholder (or Target on

behalf of the relevant Scheme Shareholder), with a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such.

- (c) The parties agree to consult (together with Target) in good faith as to the application of Subdivision 14-D in relation to the Scheme including, without limitation, as to whether sections 14-200 or 14-210(1) of Subdivision 14-D applies, or will apply, to any Scheme Shareholder. The parties agree to take all actions that they, acting reasonably, mutually agree through that consultation, are necessary or desirable in relation to the operation of Subdivision 14-D to the Scheme, and each agree to not take any unilateral action in relation to the operation of Subdivision 14-D to the Scheme in the absence of such agreement.

5.6 **Unclaimed monies**

Target may cancel a cheque issued under clause 5.4 of this Scheme if the cheque:

- (a) is returned to Target; or
- (b) has not been presented for payment within 6 months after the date on which the cheque was sent.

During the period of 1 year commencing on the Implementation Date, on request from a Scheme Shareholder, Target must reissue a cheque that was previously cancelled under this clause 5.5.

5.7 **Orders of a Court**

In the case of notice having been given to Target (or the Registry) of an order made by a Court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 5.4 of this Scheme, then Target must procure that payment is made in accordance with that order; or
- (b) which would prevent Target from dispatching payment to any particular Scheme Shareholder in accordance with clause 5.4 of this Scheme, Target may (as applicable) retain an amount, in Australian dollars, equal to the Scheme Consideration that would otherwise have been payable to that Scheme Shareholder in accordance with clause 5.4 until such time as provision of the Scheme Consideration in accordance with this Scheme is permitted by law.

5.8 **Joint holders**

In the case of Scheme Shares held in joint names:

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

5.9 **Surplus funds**

To the extent that, following satisfaction of Target's obligations under clause 5.4 there is a surplus in the amount held by Target as Trustee for the Scheme Shareholders in the Trust Account, that surplus must be paid by Target to Bidder.

6. DEALINGS IN TARGET SHARES

6.1 Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant Target Shares on or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before 4:00pm on the Record Date at the place where the Register is kept,

and Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) Target must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 1.1(b) before, on or as soon as practicable after the Record Date.
- (b) 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 Target shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from the Record Date, each entry on the Register (other than entries on the Register in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

6.3 Information to be given to Bidder

As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Register as at the Record Date are available to Bidder in the form Bidder reasonably requires.

6.4 Suspension of trading

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

6.5 **Target to apply for termination of quotation of Target Shares**

On a date after the Implementation Date to be determined by Bidder, Target will apply for termination of the official quotation on the stock market conducted by ASX of Target Shares and to have itself removed from the official list of ASX.

7. **GENERAL PROVISIONS**

7.1 **Appointment of agent and attorney**

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints Target as its agent and attorney for the purposes of:
- (i) in the case of Scheme Shares in a CHES holding:
 - (A) causing a message to be transmitted to ASX Settlement Pty Ltd (ABN 49 008 504 532) in accordance with the ASX Settlement Rules to transfer the Scheme Shares held by the Scheme Shareholder from the CHES subregister of Target to the issuer sponsored subregister operated by Target or the Registry at any time after Bidder has provided or procured the provision of the Scheme Consideration which is due under this Scheme to Scheme Shareholders; and
 - (B) completing and signing on behalf of Scheme Shareholders any required form of transfer of Scheme Shares;
 - (ii) in the case of Scheme Shares registered in the issuer sponsored subregister operated by Target or the Registry, completing and signing on behalf of Scheme Shareholders any required form of transfer;
 - (iii) in all cases, executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including the execution of the Scheme Transfer and the giving of the Scheme Shareholder's consent under clause 7.3; and
 - (iv) enforcing the Deed Poll against Bidder and Bidder Guarantor,
- and Target accepts such appointment.
- (b) 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 and officers (jointly, severally, or jointly and severally).

7.2 **Enforcement of Deed Poll**

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

7.3 **Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably consents to Target, Bidder and Bidder Guarantor doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the Implementation and performance of this Scheme.

7.4 Scheme Shareholders' agreements

Under this Scheme, each Scheme Shareholder:

- (a) agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) acknowledges that upon becoming Effective this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target.

7.5 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Target and Bidder that as at the Implementation Date:

- (a) to the extent permitted by law, all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares, and all rights and entitlements attaching to those Scheme Shares, to Bidder.

7.6 Title to Scheme Shares

- (a) Subject to this Scheme becoming Effective, immediately upon provision of the Scheme Consideration in accordance with this Scheme, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

7.7 Appointment of sole proxy

Subject to this Scheme becoming Effective, immediately upon provision of the Scheme Consideration in accordance with this Scheme, and until Target registers Bidder as the holder of all Scheme Shares in the Register, each Scheme Shareholder:

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend Target Shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target Shareholders' resolution;

- For personal use only
- (b) acknowledges that no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 1.1(a));
 - (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
 - (d) acknowledges and agrees that in exercising the powers conferred in clause 1.1(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

7.8 **Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or at the Registry as the case may be.

7.9 **Inconsistencies**

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

7.10 **No liability when acting in good faith**

None of Bidder, Target nor any director, officer, secretary or employee of Target will be liable for anything done or omitted to be done in good faith in the performance of this Scheme or the Deed Poll.

7.11 **Further assurance**

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, this Scheme.

7.12 **Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act:

- (a) Target may, by its counsel on behalf of all persons concerned, consent to only such of those conditions or alterations to this Scheme to which Bidder has consented, such consent not to be unreasonably withheld or delayed; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Target has consented to.

7.13 **Stamp Duty**

Bidder must pay all stamp duties and any related fines and penalties payable on the transfer by Scheme Shareholder of the Scheme Shares to Bidder.

7.14 **Governing Law**

- (a) This Scheme is governed by and will be construed according to the laws of Victoria, Australia.

- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and of the courts competent to determine appeals from those courts.

ANNEXURE C

Deed Poll – Structure A

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Deed Poll – Structure A Scheme

JBS Australia Pty Ltd

ACN 011 062 338

and

Industry Park Pty Ltd

ACN 007 256 215

Deed Poll relating to proposed Scheme of Arrangement between
Huon Aquaculture Group Limited and its members

2021

DEED POLL

THIS DEED POLL is made on

2021

BY

JBS Australia Pty Ltd ACN 011 062 338 of 62 McRoyle Street, Wacol, QLD 4076 (**Bidder**)

Industry Park Pty Ltd ACN 007 256 215 of 62 McRoyle Street, Wacol, QLD 4076 (**Bidder Guarantor**).

FOR THE BENEFIT OF

Each holder of Scheme Shares in Huon Aquaculture Group Limited ACN 114 456 781 (**Target**) as at the Record Date (other than the Excluded Shareholder) (**Scheme Shareholder**).

RECITALS

- (A) Target, Bidder and Bidder Guarantor have entered into the Scheme Implementation Deed, under which:
- (1) Target has agreed to propose the Scheme; and
 - (2) Bidder has agreed to enter into (and procure that Bidder Guarantor enters into) this deed poll, and pay or procure the payment of the Scheme Consideration to each Scheme Shareholder in accordance with the Scheme.
- (B) Bidder is executing this deed poll for the purpose of covenanting in favour of each Scheme Shareholder to undertake the actions attributed to Bidder under the Scheme.
- (C) Bidder Guarantor is executing this deed poll for the purpose of guaranteeing that Bidder undertakes such actions.

BIDDER AND BIDDER GUARANTOR DECLARE AS FOLLOWS

1. INTERPRETATION

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Excluded Shareholder means Surveyors Investments Pty Ltd ACN 602 004 179.

Scheme means the proposed scheme of arrangement between Target and Scheme Shareholders under which all the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, substantially in the form at Annexure A of the Scheme Implementation Deed, or as otherwise agreed by Bidder and Target, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Target and Bidder.

Scheme Implementation Deed means the Scheme Implementation Deed between Bidder, Bidder Guarantor and Target dated 6 August 2021 relating to the implementation of the Scheme.

All other words and phrases used in this deed poll have the same meaning as given to them in the Scheme or the Scheme Implementation Deed, as applicable.

1.2 **General interpretation**

Clause 1.2 of the Scheme applies to this deed poll.

1.3 **Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed poll.

1.4 **Nature of deed poll**

Bidder and Bidder Guarantor each acknowledge that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it and that under the Scheme, Target undertakes to enforce this deed poll against Bidder and Bidder Guarantor on behalf of and as agent and attorney for each Scheme Shareholder.

2. **CONDITIONS PRECEDENT AND TERMINATION**

2.1 **Conditions precedent**

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

2.2 **Termination**

Without limiting any rights under the Scheme Implementation Deed, if the Scheme Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective, this deed poll automatically terminates and the terms of this deed poll will be of no further force or effect.

2.3 **Consequences of termination**

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

- (a) each of Bidder and Bidder Guarantor is released from their obligations to further perform this deed poll except those obligations contained in clause 7.2 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights, powers or remedies they have against Bidder and Bidder Guarantor in respect of any breach of this deed poll which occurred before it was terminated.

3. **PERFORMANCE OF OBLIGATIONS GENERALLY**

Bidder and Bidder Guarantor will each comply with its obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

4. **SCHEME CONSIDERATION**

4.1 **Compliance with Scheme obligations generally**

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

- (a) observe and perform the steps attributed to them under, and otherwise to comply with, the Scheme as if named as parties to the Scheme and do all acts and things necessary to give effect to the Scheme; and

- (b) provide the Scheme Consideration to the Trust Account on behalf of each relevant Scheme Shareholder in accordance with the Scheme.

4.2 **Manner of payment**

Bidder's undertaking to provide the Scheme Consideration to Target on behalf of each Scheme Shareholder is satisfied by Bidder, no later than 1 Business Day before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account).

4.3 **Bidder Guarantor undertakings**

Subject to clause 2, Bidder Guarantor undertakes in favour of each Scheme Shareholder that it will procure that Bidder observes and performs all obligations contemplated of it under clause 4.1.

5. **REPRESENTATIONS AND WARRANTIES**

Each of Bidder and Bidder Guarantor represents and warrants that:

- (a) **(status)** it is a corporation validly existing under the laws of its place of registration;
- (b) **(power)** it has the legal right and full corporate power to enter into this deed poll, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this deed poll do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this deed poll, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(solvency)** it is solvent and no resolutions have been passed nor has any other step been taken or legal 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 (or any event under any law which is analogous to, or which has substantially similar effect to, any of the events referred to in this paragraph);
- (f) **(validity of obligations)** its obligations under this deed poll are valid and binding and are enforceable against it in accordance with its terms; and
- (g) **(no conflicts)** this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

6. CONTINUING OBLIGATIONS

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

- (a) each of Bidder and Bidder Guarantor have fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

7. COSTS

7.1 Costs

If the Scheme becomes Effective, Bidder agrees to pay all costs in respect of the Scheme (including, in connection with the transfer of Scheme Shares to Bidder in accordance with the terms of the Scheme) except for amounts covered by clause 7.2.

7.2 Stamp duty and registration fees

Bidder must, and Bidder Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to:

- (a) pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this deed poll or any other transaction contemplated by this deed poll (including any related fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnify each Scheme Shareholder against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 7.2(a).

8. NOTICES

Notices and other communications in connection with this deed poll must be in writing. They must be sent to the address or email address below and (except in the case of email) marked for the attention of the person referred to below. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

Target

Address: Level 13, 188 Collins Street, Hobart Tasmania Australia 7000
Email: pwiese@huonacqua.com.au
Attention: Philip Wiese

with a copy to:

Address: Ashurst
Level 16, 80 Collins Street, Melbourne Victoria 3000
Email: John.Brewster@ashurst.com
Attention: John Brewster

Bidder

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au
Attention: Edison Alvares and Jacinta Dale

with a copy to:

Address: MinterEllison
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

Bidder Guarantor

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au
Attention: Edison Alvares and Jacinta Dale

with a copy to:

Address: MinterEllison
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

9. **GENERAL**

9.1 **Waiver**

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

9.2 **Variation**

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

- (a) the variation is agreed to by Target, Bidder and Bidder Guarantor in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

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

9.3 **Assignment**

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

9.4 **Governing law and jurisdiction**

This deed poll is governed by the law in force in Victoria, Australia. Bidder and Bidder Guarantor each irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

9.5 **Further action**

Each of Bidder and Bidder Guarantor agrees to do anything including executing all documents and do all things (on their own behalf or on behalf of each Scheme Shareholder) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

9.6 **Service of process**

Without preventing any other method of service, any document in an action in connection with this deed poll may be served on Bidder and Bidder Guarantor respectively by being delivered or left at their addresses set out in clause 8.

EXECUTED as a **deed poll**.

EXECUTED by **JBS AUSTRALIA PTY LTD:**

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **INDUSTRY PARK PTY LTD:**

Signature of director

Signature of director/secretary

Name

Name

For personal use only

ANNEXURE D

Deed Poll – Structure B

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Deed Poll – Structure B Scheme

JBS Australia Pty Ltd

ACN 011 062 338

and

Industry Park Pty Ltd

ACN 007 256 215

Deed Poll relating to proposed Scheme of Arrangement between
Huon Aquaculture Group Limited and its members

2021

DEED POLL

THIS DEED POLL is made on

2021

BY

JBS Australia Pty Ltd ACN 011 062 338 of 62 McRoyle Street, Wacol, QLD 4076 (**Bidder**)

Industry Park Pty Ltd ACN 007 256 215 of 62 McRoyle Street, Wacol, QLD 4076 (**Bidder Guarantor**).

FOR THE BENEFIT OF

Each holder of Scheme Shares in Huon Aquaculture Group Limited ACN 114 456 781 (**Target**) as at the Record Date (**Scheme Shareholder**)

RECITALS

- (A) Target, Bidder and Bidder Guarantor have entered into the Scheme Implementation Deed, under which:
- (1) Target has agreed to propose the Scheme; and
 - (2) Bidder has agreed to enter into (and procure that Bidder Guarantor enters into) this deed poll, and pay or procure the payment of the Scheme Consideration to each Scheme Shareholder in accordance with the Scheme.
- (B) Bidder is executing this deed poll for the purpose of covenanting in favour of each Scheme Shareholder to undertake the actions attributed to Bidder under the Scheme.
- (C) Bidder Guarantor is executing this deed poll for the purpose of guaranteeing that Bidder undertakes such actions.

BIDDER AND BIDDER GUARANTOR DECLARE AS FOLLOWS

1. INTERPRETATION

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Scheme means the proposed scheme of arrangement between Target and Scheme Shareholders under which all the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, substantially in the form at Annexure A of the Scheme Implementation Deed, or as otherwise agreed by Bidder and Target, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Target and Bidder.

Scheme Implementation Deed means the Scheme Implementation Deed between Bidder, Bidder Guarantor and Target dated 6 August 2021 relating to the implementation of the Scheme.

All other words and phrases used in this deed poll have the same meaning as given to them in the Scheme or the Scheme Implementation Deed, as applicable.

1.2 General interpretation

Clause 1.2 of the Scheme applies to this deed poll.

1.3 **Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed poll.

1.4 **Nature of deed poll**

Bidder and Bidder Guarantor each acknowledge that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it and that under the Scheme, Target undertakes to enforce this deed poll against Bidder and Bidder Guarantor on behalf of and as agent and attorney for each Scheme Shareholder.

2. **CONDITIONS PRECEDENT AND TERMINATION**

2.1 **Conditions precedent**

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

2.2 **Termination**

Without limiting any rights under the Scheme Implementation Deed, if the Scheme Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective, this deed poll automatically terminates and the terms of this deed poll will be of no further force or effect.

2.3 **Consequences of termination**

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

- (a) each of Bidder and Bidder Guarantor is released from their obligations to further perform this deed poll except those obligations contained in clause 7.2 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights, powers or remedies they have against Bidder and Bidder Guarantor in respect of any breach of this deed poll which occurred before it was terminated.

3. **PERFORMANCE OF OBLIGATIONS GENERALLY**

Bidder and Bidder Guarantor will each comply with its obligations under the Scheme Implementation Deed and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

4. **SCHEME CONSIDERATION**

4.1 **Compliance with Scheme obligations generally**

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

- (a) observe and perform the steps attributed to them under, and otherwise to comply with, the Scheme as if named as parties to the Scheme and do all acts and things necessary to give effect to the Scheme; and
- (b) provide the Scheme Consideration to the Trust Account on behalf of each relevant Scheme Shareholder in accordance with the Scheme.

4.2 Manner of payment

Bidder's undertaking to provide the Scheme Consideration to Target on behalf of each Scheme Shareholder is satisfied by Bidder, no later than 1 Business Day before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited will be to Bidder's account).

4.3 Bidder Guarantor undertakings

Subject to clause 2, Bidder Guarantor undertakes in favour of each Scheme Shareholder that it will procure that Bidder observes and performs all obligations contemplated of it under clause 4.1.

5. REPRESENTATIONS AND WARRANTIES

Each of Bidder and Bidder Guarantor represents and warrants that:

- (a) **(status)** it is a corporation validly existing under the laws of its place of registration;
- (b) **(power)** it has the legal right and full corporate power to enter into this deed poll, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this deed poll do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this deed poll, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(solvency)** it is solvent and no resolutions have been passed nor has any other step been taken or legal 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 (or any event under any law which is analogous to, or which has substantially similar effect to, any of the events referred to in this paragraph);
- (f) **(validity of obligations)** its obligations under this deed poll are valid and binding and are enforceable against it in accordance with its terms; and
- (g) **(no conflicts)** this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

6. CONTINUING OBLIGATIONS

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

- (a) each of Bidder and Bidder Guarantor have fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

7. **COSTS**

7.1 **Costs**

If the Scheme becomes Effective, Bidder agrees to pay all costs in respect of the Scheme (including, in connection with the transfer of Scheme Shares to Bidder in accordance with the terms of the Scheme) except for amounts covered by clause 7.2.

7.2 **Stamp duty and registration fees**

Bidder must, and Bidder Guarantor unconditionally and irrevocably guarantees the obligation of Bidder to:

- (a) pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this deed poll or any other transaction contemplated by this deed poll (including any related fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnify each Scheme Shareholder against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 7.2(a).

8. **NOTICES**

Notices and other communications in connection with this deed poll must be in writing. They must be sent to the address or email address below and (except in the case of email) marked for the attention of the person referred to below. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

Target

Address: Level 13, 188 Collins Street, Hobart Tasmania Australia 7000
Email: pwiese@huonacqua.com.au
Attention: Philip Wiese

with a copy to:

Address: Ashurst
Level 16, 80 Collins Street, Melbourne Victoria 3000
Email: John.Brewster@ashurst.com
Attention: John Brewster

Bidder

Address: 62 McRoyle Street, Wacol, Queensland 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au
Attention: Edison Alvares and Jacinta Dale

with a copy to:

Address: MinterEllison
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

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Bidder Guarantor

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au
Attention: Edison Alvares and Jacinta Dale

with a copy to:

Address: MinterEllison
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

9. GENERAL

9.1 Waiver

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

9.2 Variation

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

- (a) the variation is agreed to by Target, Bidder and Bidder Guarantor in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

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

9.3 Assignment

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

9.4 **Governing law and jurisdiction**

This deed poll is governed by the law in force in Victoria, Australia. Bidder and Bidder Guarantor each irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place.

9.5 **Further action**

Each of Bidder and Bidder Guarantor agrees to do anything including executing all documents and do all things (on their own behalf or on behalf of each Scheme Shareholder) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

9.6 **Service of process**

Without preventing any other method of service, any document in an action in connection with this deed poll may be served on Bidder and Bidder Guarantor respectively by being delivered or left at their addresses set out in clause 8.

EXECUTED as a **deed poll**.

EXECUTED by **JBS AUSTRALIA PTY LTD:**

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **INDUSTRY PARK PTY LTD:**

Signature of director

Signature of director/secretary

Name

Name

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ANNEXURE E

Share Sale Agreement

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Execution version

Share Sale Agreement – Surveyors Investments Pty Ltd

Peter James Bender

and

JBS Australia Pty Ltd

ACN 011 062 338

and

Industry Park Pty Ltd

ACN 007 256 215

2021

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THIS AGREEMENT is made on

2021

BETWEEN:

- (1) **Peter James Bender** whose registered office is at c/o Huon Aquaculture Group Limited, Level 13, 188 Collins Street, Hobart TAS 3000 (**Seller**);
- (2) **JBS Australia Pty Ltd** ACN 011 062 338 whose registered office is at 62 McRoyle Street, Wacol, QLD 4076 (**Buyer**); and
- (3) **Industry Park Pty Ltd** ACN 007 256 215 whose registered office is at 62 McRoyle Street, Wacol, QLD 4076 (**Buyer Guarantor**).

RECITALS

- (A) Seller is the registered holder and beneficial owner of the Sale Shares.
- (B) Buyer is a subsidiary of Buyer Guarantor.
- (C) Seller and Buyer enter this document for the sale of the Sale Shares for the consideration and upon the terms set out in this document.
- (D) The Sale Shares comprise 100% of the shares in the Company, which currently holds 40.53% of the shares in Target.
- (E) The parties are entering into this document at the same time as Buyer, Buyer Guarantor and Target are entering into the Scheme Implementation Deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

Terms defined in the Scheme Implementation Deed have a corresponding meaning in this document.

The following definitions also apply in this document.

ASIC means the Australian Securities and Investments Commission.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Hobart, Tasmania, Melbourne, Victoria, and Brisbane, Queensland, Australia.

Buyer Group means Buyer and its related bodies corporate (and a member of the Buyer Group means any one of them).

Claim means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Company means Surveyors Investments Pty Ltd ACN 602 004 179, the details of which are set out in Schedule 1.

Completion means completion of the sale and purchase of the Sale Shares under clause 5.

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

Deed of Restraint means the document entitled "Deed of Restraint" to be entered into between the Buyer Guarantor and each Restricted Party on or about the date of this document in the form included at Annexure A to this document.

Effective has the meaning given to that term in the Scheme Implementation Deed.

Encumbrance means:

- (a) a mortgage, charge, pledge, lien, hypothecation, power of attorney or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, a notice under section 255 of the *Income Tax Assessment Act 1936* (Cth), subdivision 260-A in schedule 1 of the *Taxation Administration Act 1953* (Cth) or any similar legislation;
- (b) any other interest or arrangement of any kind that secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property;
- (c) any third party interest (for example, a trust or an equity);
- (d) a right of a person to acquire a share or to restrain someone from acquiring a share (including under an option, a right of pre-emption or a right of first refusal, such as one in a shareholders' agreement or in a constitution);
- (e) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (f) an easement, restrictive covenant, caveat or similar restriction over property; or
- (g) an agreement to create any of the above or to allow any of the above to exist.

General Meeting means the meeting of Target Shareholders to consider approval of the Share Sale Agreement Shareholder Approval, to be held on the Meeting Date.

Government Agency means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia or elsewhere, including the ACCC, ASIC, ASX, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX.

Group means the Target and its subsidiaries.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

GST Law means the same as "GST law" means in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

Implementation has the meaning given to that term in the Scheme Implementation Deed.

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Implementation Date has the meaning given to that term in the Scheme Implementation Deed.

Insolvency Event means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b)
 - (i) a controller or analogous person being appointed to the person or any of the person's property;
 - (ii) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
 - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (c) the holder of a Security Interest or any agent on its behalf, appointing a controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA) or otherwise enforcing or exercising any rights under the Security Interest or Chapter 4 of the PPSA;
- (d) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) an application being made to a court for an order for its winding up;
- (f) an order being made, or the person passing a resolution, for its winding up;
- (g) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (h) taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors; or
- (i) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (j) any analogous event under the laws of any applicable jurisdiction.

Loss includes any loss, damage, liability, obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a solicitor and own client basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Meeting Date means the date of the General Meeting and the Scheme Meeting.

Purchase Price has the meaning given to it in clause 3.1.

Restricted Area means:

- (a) Australia, or if that area is unenforceable;

- (b) Tasmania, Western Australia, South Australia, Northern Territory and Queensland, or if that area is unenforceable;
- (c) Tasmania and Western Australia, or if that area is unenforceable;
- (d) Tasmania.

Restricted Business means the operation of any business involved in the growing, cultivating (whether in a body of water or on land), harvesting, processing or selling (domestically or internationally) of:

- (a) any aquatic organism, or if that business is unenforceable;
- (b) salmon, trout, finfish of any kind and shellfish of any kind, or if that business is unenforceable;
- (c) salmon, trout and finfish of any kind, or if that business is unenforceable;
- (d) salmon and trout.

Restricted Party means each of:

- (a) Peter Bender;
- (b) Frances Bender;
- (c) James Nicholas Bender;
- (d) Paul Anthony Bender;
- (e) Laura Kate Shield;
- (f) Katie Abdilla; and
- (g) Boz George Shield.

Restricted Period means the period commencing on the Implementation Date and ending on the date that is:

- (a) four years after the Implementation Date, or if that period is unenforceable;
- (b) three years after the Implementation Date, or if that period is unenforceable;
- (c) two years after the Implementation Date, or if that period is unenforceable;
- (d) one year after the Implementation Date.

Sale Shares means 44,527,252 fully paid ordinary shares in the Company.

Schemes means Structure A Scheme and Structure B Scheme and **Scheme** means any one of them.

Scheme Consideration has the meaning given to that term in the Scheme Implementation Deed.

Scheme Implementation Deed means the scheme implementation deed between Buyer, Buyer Guarantor and Target pursuant to which Target agrees to propose the:

- (a) Structure A Scheme; and

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(b) Structure B Scheme,

to the relevant Scheme Shareholders and under which each of Buyer and Buyer Guarantor agree to take certain steps to give effect to the Schemes.

Scheme Meeting has the meaning given in the Scheme Implementation Deed.

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

Seller Affiliate means a related body corporate of a Seller or a person who is a director, officer, employee or agent of a member of the Seller Group.

Seller Group means Seller and its related bodies corporate (and a member of the Seller Group means any one of them), excluding, after Completion, the Company.

Share Sale Agreement Shareholder Approval means a resolution in favour of the transactions contemplated by this document passed by the required majority of Target Shareholders (other than the Bidder and Peter Bender and their respective associates) under section 611(7) of the Corporations Act.

Structure A Scheme has the meaning in the Scheme Implementation Deed.

Structure B Scheme has the meaning in the Scheme Implementation Deed.

Scheme Shareholder has the meaning in the Scheme Implementation Deed.

Sunset Date means the earlier of:

- (a) 28 February 2022; and
- (b) the termination of this document.

Target means Huon Aquaculture Group Limited ACN 114 456 781.

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

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Warranty means a representation or warranty made by Seller under clause 9.1 or clause 9.2.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
 - (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (h) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.
 - (i) A reference to **dollars** or **\$** is to an amount in Australian currency.
 - (j) A reference to time is to local time in Melbourne, Australia.
 - (k) Words defined in the GST Law have the same meaning in clauses, paragraphs or other parts of this document concerning GST.

1.3 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

2. **AGREEMENT TO SELL AND BUY THE SALE SHARES**

2.1 **Sale and purchase**

Seller agrees to sell the Sale Shares to Buyer free from any Encumbrance and Buyer agrees to buy the Sale Shares from Seller for the Purchase Price on the terms of this document.

2.2 **Title, property and risk**

Until Completion, the legal title to, property in and risk of the Sale Shares remain solely with Seller, but they pass to Buyer on and from Completion with all rights which were attached to or had accrued on the Sale Shares at Completion.

3. **PURCHASE PRICE**

3.1 **Purchase Price**

- (a) Subject to clause 3.1(b), the purchase price for the Sale Shares is an amount equal to the number of Target Shares held by the Company on the Implementation Date multiplied by the Scheme Consideration (**Purchase Price**).
- (b) The parties acknowledge and agree that to the extent the Scheme Consideration is varied or adjusted under the Scheme Implementation Deed for any reason, the Purchase Price will be adjusted accordingly.

3.2 **Payment obligations**

Buyer must on Completion, pay the Purchase Price to Seller.

3.3 **No set off**

Buyer must not make any set-off, deduction or withholding from payment of any part of the Purchase Price.

3.4 **Substantial holding disclosure**

Buyer must prepare, in consultation with the Seller any and all substantial holding notices required under the Corporations Act.

4. **CONDITIONS PRECEDENT**

4.1 **Conditions Precedent**

The obligations of the parties with respect to Completion are subject to satisfaction or waiver in accordance with clause 4.2 of the following conditions:

- (a) **(Structure A Scheme)**: the Structure A Scheme becoming Effective; and
- (b) **(Corporations Act section 611 item 7 approval)**: the approval of the purchase by Buyer of the Sale Shares by a resolution passed at a general meeting of the members of Target (after being given the information required by item 7 in the table to section 611 of the Corporations Act) at which no votes are cast in relation to the resolution by Seller, Buyer or by any person associated (within the meaning of "associate" in section 611 of the Corporations Act) with either of them
- (c) **(FIRB approval)**: before 5.00 pm on the Business Day before the Second Court Date one of the following occurs:
 - (i) Buyer has received written notification by or on behalf of the Treasurer of the Commonwealth of Australia under the FATA to the effect that the Commonwealth Government has no objection under its foreign investment policy to Buyer acquiring all the Target Shares under the Scheme and all of the shares in the capital of the Excluded Shareholder under this document, either on an unconditional basis or subject only to:
 - (A) 'standard' tax conditions which are in the form, or substantially in the form, of those set out in items 1 to 6 of Part D of the Australian Foreign Investment Review Board's Guidance Note 12 'Tax Conditions' (in the form last updated on 18 December 2020); and
 - (B) such other conditions acceptable to Buyer acting reasonably;

- (ii) the period provided for under the FATA during which the Treasurer may make an order or interim order under the FATA prohibiting Buyer acquiring the Target Shares under the Scheme and the shares in the capital of the Excluded Shareholder under this document has elapsed without such an order being made; or
- (iii) if an interim order has been made to prohibit Buyer acquiring all the Target Shares under the Scheme and the shares in the capital of the Excluded Shareholder under this document, the subsequent period for making a final order under the FATA has elapsed without any final order being made.

4.2 **Waiver of conditions**

- (a) The Conditions Precedent in clause 4.1(a) is for the benefit of each party.
- (b) The Conditions Precedent in clause 4.1(b) and 4.1(c) cannot be waived by a party.
- (c) Subject to clause 4.2(b), if a Condition Precedent has been included for the benefit of one party only, then only that party may, in its sole and absolute discretion, rely on or waive the breach or non-fulfilment of the Condition Precedent (except that a party must not waive a Condition Precedent if that waiver would result in a breach of law).
- (d) Subject to clause 4.2(b), if a Condition Precedent has been included for the benefit of more than one party, then the breach or non-fulfilment of the Condition Precedent may be waived only by the consent of all those parties.
- (e) The breach or non-fulfilment of a Condition Precedent may only be waived in writing.

4.3 **Obligation to satisfy conditions**

Subject to clause 5, each party must:

- (a) use its reasonable endeavours (other than waiver) to ensure that each Condition Precedent is satisfied as soon as practicable;
- (b) not take any action or refrain from taking any action (except as required by law) designed to prevent the Conditions Precedent being satisfied, without the prior consent of the other parties;
- (c) promptly give the other party all information reasonably requested by that party in connection with any application required to satisfy a Condition Precedent;
- (d) keep each other informed of any circumstances which may result in any of those Conditions Precedent not being satisfied in accordance with its terms; and
- (e) promptly advise the other party of the satisfaction of a Condition Precedent.

4.4 **Result of non-satisfaction of conditions**

If the Conditions Precedent are not satisfied or waived under clause 4.2 on or before the Sunset Date, then Seller or Buyer may at any time after that date and before satisfaction or waiver of those Conditions Precedent, terminate this document by giving written notice to each other party.

5. **ACKNOWLEDGEMENTS**

The parties acknowledge that nothing in this document shall confer on the Buyer, prior to the Implementation of the Structure A Scheme:

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- (a) any power to exercise, control or substantially influence, the exercise of, a right to vote attached to any Target Shares in which the Seller has a relevant interest; or
 - (b) any power to dispose of, or control the exercise of a power to dispose of, Target Shares in which the Seller has a relevant interest.

6. COMPLETION

6.1 Time and place for Completion

Completion must take place on the Implementation Date at Ashurst, Level 16, 80 Collins Street, Melbourne VIC 3000, immediately prior to Implementation of the Structure A Scheme, or at such other time or place as the parties may agree.

6.2 Buyer obligations at Completion

At Completion Buyer must:

- (a) pay to Seller, or as Seller may direct by notice to Buyer, the amount specified in clause 3.1; and
- (b) provide written confirmation of the persons to be appointed as directors, secretary and public officer of the Company with effect from the Implementation Date together with signed consents to act in those roles from each of those persons.

6.3 Seller's delivery obligations at Completion

At Completion, Seller must, subject to receipt by Seller of the amount specified in clause 3.1, give Buyer:

- (a) a transfer of the Sale Shares, naming Buyer (or its nominee) as transferee, which has been duly executed by Seller and in registrable form, together with a new share certificate for the Sale Shares and the return of the old share certificate in the name of the Seller;
- (b) a copy of a written resignation of each director, secretary and public officer of the Company with effect from the Implementation Date;
- (c) the books and records of the Company, including all registers and the ASIC corporate key; and
- (d) such other documents as may be agreed by the parties.

6.4 Board meeting of the Company

At Completion, Seller must ensure that a duly convened meeting of the directors of the Company is held, and that resolutions for the following are passed at those meetings:

- (a) to approve the transfer of the Sale Shares to Buyer, to register the transfers of the Sale Shares;
- (b) to issue a new share certificate for the Sale Shares in the name of Buyer (or its nominee), and to cancel the existing share certificate;
- (c) to appoint as directors, secretary and public officer of the Company with effect from the Scheme Implementation Date those persons nominated by Buyer under clause 6.2;

- (d) to note the resignations of each director, secretary and public officer of the Company with effect from the Implementation Date, except for those persons nominated by Buyer under clause 6.2;
- (e) to cancel any powers of attorney granted by the Company to any person; and
- (f) to change the signatories of any bank account of the Company as notified by the Buyer to the Seller prior to Completion.

6.5 **When Completion occurs**

Completion occurs only once Buyer and Seller have each satisfied their respective obligations under clauses 6.2, 6.3 and 6.4.

7. **RESTRAINT**

7.1 **Acknowledgements**

- (a) Subject to the Scheme becoming Effective, in consideration of, among other things, the benefits to be derived directly or indirectly by each Restricted Party in connection with this document, the Scheme and any ongoing employment by Target (as applicable), the Seller agrees to give the covenants contained in this clause 7 and acknowledges that these covenants constitute reasonable protection of the Buyer's interests taking into account the benefits to be received by the Seller in connection with the Scheme and this document and any ongoing employment by the Target.
- (b) The Seller agrees to procure that each Restricted Party complies with this clause 7 as if that Restricted Party was a party to this document.

7.2 **Non compete**

- (a) Subject to the Scheme becoming Effective, during the Restricted Period and within the Restricted Area, the Seller undertakes to Buyer Guarantor and the Group, that it and any entities that it Controls will not engage in, be involved in, or be interested in (either directly or indirectly and whether solely or jointly with any other person and whether as principal, agent, director, executive officer, employee, shareholder, partner, financier, beneficiary, trustee, joint venturer, adviser, consultant to or in any entity or otherwise) any business which competes with the Restricted Business.
- (b) Subject to the Scheme becoming Effective During, the Restricted Period, the Seller undertakes to Buyer Guarantor and the Group that it and any entities that it Controls will not (either directly or indirectly and whether solely or jointly with any other person and whether as principal, agent, director, executive officer, employee, shareholder, partner, financier, beneficiary, trustee, joint venturer, adviser, consultant to or in any entity or otherwise):
- (i) solicit or entice away from the Group any person or business that has been a customer of the Group at any time during the 12 month period prior to Implementation of the Scheme;
 - (ii) interfere with the relationship between any company that is part of the Group and any of their customers or suppliers;
 - (iii) induce any employee of the Group to leave their employment; or
 - (iv) use or disclose any confidential information of any company that is part of the Group or relating to the Restricted Business.

7.3 **Independence**

Each of clauses 7.2(a) and 7.2(b) has effect as multiple, separate and independent restraints consisting of each separate restraint set out in clauses 7.2(a) and 7.2(b) combined with each individual Restricted Period, Restricted Area and Restricted Business.

7.4 **Severability**

The parties acknowledge that each of the prohibitions and restrictions contained in clause 7.2:

- (a) are to be read and construed and is to have effect as a separate severable and independent prohibition or restriction and will be enforceable accordingly; and
- (b) confer a benefit on Buyer which is no more than that which is reasonably and necessarily required by Buyer.

7.5 **Acknowledgement**

The Seller acknowledges that:

- (a) the prohibitions and restrictions contained in clause 7.2 are reasonable in the circumstances and necessary to protect the interests of Buyer; and
- (b) breach of any of the prohibitions and restrictions contained in this deed may not be adequately compensated by an award of damages and any breach by the Restricted Party of any of those prohibitions and restrictions will entitle Buyer, in addition to any other remedies available at law or in equity, to seek an injunction to restrain the committing of any breach (or continuing breach) of any of those prohibitions and restrictions.

7.6 **Exceptions**

Despite clause 7.2, the parties each acknowledge and agree that nothing in clause 7.2 will prevent each Restricted Party or any entities that each Restricted Party Controls from:

- (a) holding securities which are listed on a recognised securities exchange, so long as the interest is not more than 5% of the total number of shares on issue in the relevant class;
- (b) undertaking any activity which has been expressly agreed to in writing from time to time by the Buyer; and
- (c) recruiting a person as a response to a newspaper, web page or other public employment advertisement.

7.7 **Benefits held on trust**

Buyer holds the benefit of each indemnity, promise and obligation in this clause 7 that benefits it or any company that is part of the Group on its own behalf and on trust for each of those other companies that are part of the Group.

8. **TERMINATION**

- (a) This document immediately terminates if:
 - (i) the Share Sale Agreement Shareholder Approval is not approved by the required majority in accordance with section 611(7) of the Corporations Act at the General Meeting;

- For personal use only
- (ii) (subject to the procedure set out in clause 3.12 of the Scheme Implementation Agreement being undertaken, if applicable) the Structure A Scheme is not approved by the required majorities at the Scheme Meeting; or
 - (iii) the Court does not approve the Structure A Scheme at the Second Court Date.
- (b) This document terminates immediately if the Scheme Implementation Deed is terminated for any reason.
 - (c) This document terminates immediately if the Structure B Scheme becomes Effective.
 - (d) Without limiting other remedies, Buyer may by notice in writing to Seller terminate this document if:
 - (i) at any time prior to the Second Court Date, Seller is in material breach of its obligations under this document (including material breach of a warranty in clause 9.1 or 9.2) and the Seller has failed to remedy that breach within 10 Business Days (or by the Second Court Date, if earlier) of receipt by it of a notice in writing from Buyer setting out the details of the relevant circumstance and requesting Seller to remedy the breach; or
 - (ii) on or following the Second Court Date but before Completion occurs, if Seller breaches:
 - (A) clause 2.1 or materially breaches a warranty in clause 9.1 or 9.2 and Seller has failed to remedy that breach within 5 Business Days (or by the Implementation Date, if earlier) of receipt by it of a notice in writing from Buyer setting out details of the relevant circumstance and requesting Buyer to remedy the breach; or
 - (B) clause 6.3.
 - (e) If this document is terminated in accordance with clause 4.4, clauses 8(a)8(b), 8(c) or 8(d) then all rights and obligations under this document other than:
 - (i) rights and obligations expressed in clauses 1 (Interpretation), 10 (Costs and Stamp Duty), 14 (Confidentiality), 15 (Notices), 16 (Amendment and Assignment) and 17 (General);
 - (ii) rights and obligations expressed in any clause which is expressed to survive termination of this document; and
 - (iii) rights that accrue before the date on which the notice is given,terminate on the day of the notice.
 - (f) If the Structure B Scheme becomes Effective, notwithstanding any other provision of this document, all rights and obligations under clauses 1 (Interpretation), clause 7 (Restraint), 10 (Costs and Stamp Duty), 14 (Confidentiality), 15 (Notices), 16 (Amendment and Assignment) and 17 (General) will continue to apply, despite termination.

9. WARRANTIES

9.1 Mutual warranties

Each party warrants that:

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- (a) it has full legal capacity and power to enter, and has taken all action that is necessary to authorise its entry into, this document;
 - (b) this document constitutes legal, valid and binding obligations of that party, enforceable against that party in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration; and
 - (c) it is not the subject of an Insolvency Event and there are no circumstances that justify it being the subject of an Insolvency Event.

9.2 **Seller's warranties**

Seller represents and warrants to Buyer that:

- (a) as at the date of this document and Implementation Date, it is the legal and beneficial owner of the Sale Shares which comprise all of the issued share capital of the Company and Seller has full legal title, right and interest in the Sale Shares, free from any Encumbrance;
- (b) as at the date of this document and the Implementation Date no person holds any legal or beneficial interest in any performance right, option, convertible security or other right or entitlement to be issued or acquire any issued share capital of the Company or securities convertible or exercisable into issued share capital of the Company whether conditionally or unconditionally.
- (c) as at the date of this document and the Implementation Date the only business or activity ever conducted by the Company is that of holding shares in Target;
- (d) as at the date of this document the Company holds 44,527,252 shares in Target which are quoted on ASX and comprise approximately 40.53% of the issued shares of Target as at the date of this document;
- (e) as at Completion the only assets of the Company will be shares in Target; and
- (f) as at and immediately after Completion the Company will have no liabilities, including liabilities for any tax.

10. **SELLER INDEMNITY**

10.1 **Seller Indemnity**

The Seller indemnifies and holds harmless the Buyer and the Company from and against any Claim or Loss which the Buyer or the Company suffers, pays or incurs by reason of or arising from:

- (a) a breach by the Seller of the warranties in clauses 9.1 and 9.2;
- (b) any liability (including contingent liability) of the Company arising from an event or circumstances that occurred or existed or relates to matters, facts or circumstances prior to Completion or arising from the sale of the Sale Shares; or
- (c) consequences (including taxation consequences) arising from the sale of the Sale Shares as contemplated by this document.

11. **GUARANTEE BY BUYER GUARANTOR**

11.1 **Guarantee and indemnity**

For valuable consideration Buyer Guarantor:

- (a) unconditionally and irrevocably guarantees to Seller, on demand, the due and punctual performance by Buyer of all its obligations under this document; and
- (b) as a separate and additional liability, indemnifies Seller against, on demand, and pays to Seller full amount of, all Losses and Claims which may be incurred by, or brought, made or recovered against, Seller as a result of any default or delay by Buyer in the due and punctual performance of its obligations under this document.

11.2 **Principal obligations**

The obligations of Buyer Guarantor under this clause 11 are absolute, unconditional and irrevocable and:

- (a) are principal obligations of Buyer Guarantor and not ancillary or collateral to any other right or obligation;
- (b) may be enforced against Buyer Guarantor without Seller first being required to exhaust any remedy it may have against Buyer; and
- (c) extend to cover this document as amended, varied or replaced, whether with or without the consent of Buyer Guarantor.

11.3 **Continuity**

This clause 11 is a continuing guarantee and indemnity and remains in full force and effect for so long as Buyer has any liability or obligation to Seller under this document and until all those liabilities and obligations are fully discharged.

11.4 **Liability unaffected by other events**

The liability of Buyer Guarantor under this clause 11 extends to and is not affected by, any circumstance, act or omission which, but for this provision, might otherwise affect it at law or in equity including, whether with or without the consent of Buyer Guarantor:

- (a) the grant to Buyer or any other person of any time, waiver or other indulgence or concession;
- (b) the discharge or release of Buyer or any other person from any liability or obligation;
- (c) any transaction or arrangement that may take place between Seller and Buyer or any other person;
- (d) a change in the constituent documents, membership or partnership of a person;
- (e) the occurrence of an Insolvency Event in relation to Buyer or any other person;
- (f) Seller exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against Buyer or any other person;
- (g) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer (whether in whole or in part and with or without consideration) of any security now or in the future held by Seller from Buyer or any other person or by the taking of or failure to take any security;

- (h) any failure, omission or delay by Seller or Buyer to give notice to Buyer Guarantor of any default by Buyer or any other person under this document; and
- (i) any legal limitation, disability, incapacity or other circumstances related to Buyer or any other person.

11.5 **Variation of rights and cumulative remedies**

- (a) The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.
- (b) The rights, powers and remedies provided to Seller in this clause 11 are cumulative and not exclusive of any rights, powers or remedies provided at law or in equity or by any agreement.

11.6 **No withholdings**

Buyer Guarantor must make all payments which may be or become due under this clause 11 free and clear, and without deduction, of all present and future withholdings (including Taxes of Australia or any other jurisdiction) unless compelled by law. If Buyer Guarantor is compelled by law to deduct any withholding, it must pay to Seller an amount equal to the withholding in addition to any payment due under this clause 10.

11.7 **Currency**

All moneys which Buyer Guarantor is liable to pay to Seller under this clause 11 are due and payable in the currency in which they are payable under this document. All payments are to be free of any commissions and expenses relating to foreign currency conversion or any other charge or expense.

11.8 **No set-off**

Buyer Guarantor has no right to set-off, deduct or withhold any moneys which it is liable to pay to Seller under this clause 11 against any moneys which Seller or a Seller Affiliate, is liable to pay to Buyer or Buyer Guarantor whether under this document or otherwise.

12. **GST**

12.1 **GST gross up**

- (a) If a party (the **supplier**) supplies anything to another other party (the **recipient**) under or in connection with this document, the recipient must:
- (i) pay to the supplier an amount equal to any GST on that supply, without deduction or set-off of any other amount, to the extent that the consideration otherwise provided for that supply under this document is not stated to include an amount in respect of GST on the supply; and
 - (ii) make that payment as and when the consideration for that supply or part of that consideration must be paid or provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that supply.
- (b) The supplier must promptly create an adjustment note for, or apply to the Commissioner of Taxation for, a refund of, and refund to the recipient any overpayment by the recipient for GST, but the supplier need not refund to the recipient any amount for GST paid to the Commissioner of Taxation unless the

supplier is entitled to a refund or credit of that amount, or would be so entitled if the supplier refunded the additional amount to the recipient.

12.2 **GST on Claims and expenses**

- (a) If a party provides a payment for or any satisfaction of a Claim or a right to Claim under or in connection with this document (for example, for misrepresentation or for a breach of any warranty) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant on demand against, the amount of that GST.
- (b) If a party has a Claim under or in connection with this document for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which there is an entitlement to an input tax credit).
- (c) If a party has a Claim under or in connection with this document whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

13. **COSTS AND STAMP DUTY**

13.1 **Costs generally**

Subject to clause 13.2 and except as otherwise expressly provided in this document, each party must pay its own expenses incurred in negotiating, preparing, executing, completing and carrying into effect this document.

13.2 **Stamp duty generally**

Buyer must indemnify Seller against, and must pay Seller on demand the amount of, any duty that is payable on or in relation to this document and the transactions that it contemplates.

14. **CONFIDENTIALITY**

14.1 **General**

Each party must treat the terms of this document as confidential information and no announcement or communication relating to the negotiations of the parties or to the existence, subject matter or terms of this document may be made or authorised by a party unless:

- (a) each other party has first given their written approval;
- (b) the disclosure is to the party's related bodies corporate, officers, employees, consultants, professional advisers, bankers, financial advisers or financiers and those persons undertake to keep confidential any information so disclosed;
- (c) the disclosure is to a person whose consent is required under this document or is necessary or desirable for a transaction contemplated by it;
- (d) the disclosure is by Buyer to potential acquirers of any Sale Shares or any shares in Target, and those persons undertake to keep confidential any information so disclosed; or
- (e) the disclosure is made to the extent reasonably needed to comply with:

- (i) any applicable law; or
- (ii) the listing rules applicable to the party (or a related body corporate of the party),

but the party must promptly give notice of the intended disclosure to, and consult with, the other parties to the extent practicable, and use its reasonable endeavours to minimise any such disclosure and to ensure that the information so disclosed will be treated confidentially.

14.2 **Confidentiality of records**

- (a) Subject to paragraph (b), Seller must:
 - (i) following Completion, treat as strictly confidential and not disclose or use any information contained in any records, documents or information relating to the Company, its assets, liabilities or affairs; and
 - (ii) subject to their internal corporate governance and record keeping policies and to the extent practicable, delete and destroy any records, documents and information held by them which relate to the Company, its assets, liabilities or affairs.
- (b) Paragraph (a) does not prohibit:
 - (i) disclosure or use required for the purpose of any proceeding arising out of this document or any other agreement entered into under or pursuant to this document; or
 - (i) disclosure to any Government Agency, provided that such disclosure is made only to the extent which is necessary to satisfy applicable legal or regulatory obligations.

15. **NOTICES**

15.1 **How to give a notice**

A notice, consent or other communication under this document is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (c) addressed to the person to whom it is to be given; and
- (d) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent in electronic form (such as email).

15.2 **When a notice is given**

A notice, consent or other communication that complies with this clause 15 is regarded as given and received:

- (a) if it is sent by mail:
 - (iii) within Australia – three Business Days after posting; or
 - (iv) to or from a place outside Australia – seven Business Days after posting; and

- (e) if sent by email before 5.00pm on a Business Day at the place of receipt and subject to:
- (i) the sender's email system confirming successful delivery of the notice to the recipient's server; and
 - (ii) the sender not promptly after transmission receiving an out of office notification from each required recipient,
- on the day it is sent and otherwise on the next Business Day at the place of receipt.

15.3 **Address for notices**

A person's mail and email address and fax number are those set out below, or as the person notifies the sender:

Buyer

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au

Attention: Edison Alvares and Jacinta Dale

with a copy to MinterEllison

Address: MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

Buyer Guarantor

Address: 62 McRoyle Street, Wacol, QLD 4076
Email: Edison.Alvares@jbssa.com.au and Jacinta.Dale@jbssa.com.au

Attention: Edison Alvares and Jacinta Dale

with a copy to MinterEllison

Address: MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Email: Michael.Scarf@minterellison.com
Attention: Michael Scarf

Seller

Address: Level 13, 188 Collins Street, Hobart TAS 7000
Email: pbender@huonaqua.com.au
Attention: Peter Bender

with a copy to Ashurst Australia

Address: Level 16, 80 Collins Street Melbourne VIC 3000
Email: john.brewster@ashurst.com
Attention: John Brewster, Partner

16. **AMENDMENT AND ASSIGNMENT**

16.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

16.2 **Assignment**

A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.

17. **GENERAL**

17.1 **Governing law**

- (a) This document is governed by the laws of the State of Victoria, Australia.
- (b) Each party submits to the jurisdiction of the courts of that State, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

17.2 **Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this document.

17.3 **Consents**

Where this document contemplates that a party may agree, approve or consent to something (however it is described), that party may not unreasonably withhold or delay giving that agreement, approval or consent, unless this document expressly contemplates otherwise.

17.4 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

17.5 **Operation of this document**

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

17.6 **No merger**

No provision of this document merges on Completion.

17.7 **Counterparts**

This document may be executed in counterparts.

SCHEDULE 1
COMPANY DETAILS

Name:	Surveyors Investments Pty Ltd
Australian Company Number:	602 004 179
Australian Business Number:	66 602 004 179
Place of registration:	Victoria
Date of registration:	24 September 2014
Registered office:	15A Hancock Street, Southbank VIC 3006
Principal place of business:	182 Tinderbox Road, Tinderbox TAS 7054
Issued shares:	44,527,252 fully paid ordinary shares
Directors and alternate directors:	Frances Robyn Bender Peter James Bender
Secretaries:	Peter James Bender

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EXECUTED as an **AGREEMENT**.

SIGNED by **PETER JAMES BENDER** in
the presence of:

Signature of party

Signature of witness

Name

For personal use only

EXECUTED by **JBS AUSTRALIA PTY LTD:**

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **INDUSTRY PARK PTY LTD:**

Signature of director

Signature of director/secretary

Name

Name

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