



26 October 2022

ELMO Software Limited

(ASX:ELO)

Recommended proposal for the acquisition of ELMO by K1 Investment Management

Sydney, Australia 26 October 2022

- ELMO announces entry into Scheme Implementation Deed ("**SID**") with K1 Investment Management
- Under the proposed Scheme of Arrangement ("**Scheme**"), ELMO shareholders will be entitled to receive \$4.85 cash per share ("**Scheme Consideration**")
- The Scheme Consideration implies an Equity Value of \$486 million¹ and represents an attractive premium for ELMO shareholders of:
 - 100.4% premium to the last trading price of ELMO shares on 12 October 2022, being the final trading day prior to ELMO's announcement that it had received approaches expressing interest in acquiring the Company ("**Undisturbed Date**")²
 - 94.6% premium to the 1-month VWAP³ of ELMO shares to the Undisturbed Date
 - 84.4% premium to the 3-month VWAP⁴ of ELMO shares to the Undisturbed Date
- The ELMO Independent Board Committee ("**IBC**") unanimously recommends that ELMO shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of ELMO shareholders
- Two of ELMO's largest shareholders, JLAB Investments (No. 2) Pty Ltd and the Garber Family Trust⁵, who in aggregate hold or control 23.4% of ELMO's ordinary shares outstanding as at the date of this announcement, have confirmed that they intend to vote all ELMO shares held or controlled by them in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of ELMO shareholders
- The transaction is subject to Foreign Investment Review Board ("**FIRB**") approval and other customary conditions, including ELMO shareholder and Court approval, which must be satisfied before the Scheme is implemented
- ELMO shareholders do not need to take any action at the present time

ELMO Software Limited ("**ELMO**" or the "**Company**") (ASX:ELO) announces that it has entered into a Scheme Implementation Deed ("**SID**") under which K1 Investment Management, LLC⁶ ("**K1**") has agreed to acquire all of the issued shares in ELMO by way of a recommended Scheme of Arrangement ("**Scheme**").

¹ Based on fully diluted shares outstanding of 100.2m

² Based on ELMO closing price on 12 October 2022 of \$2.42 per share

³ Based on ELMO 1-month VWAP to 12 October 2022 of \$2.49 per share

⁴ Based on ELMO 3-month VWAP to 12 October 2022 of \$2.63 per share

⁵ Regiton Group Pty Ltd as the trustee of the Garber Family Trust

⁶ The relevant SID counterparty is Manhattan Bondi HoldCo, Inc., a wholly-owned subsidiary of funds advised by K1

ELMO Chairman Barry Lewin commented, *“The ELMO Independent Board Committee has carefully considered the proposal and believes the offer price of \$4.85 cash per share represents compelling value for ELMO shareholders. Whilst ELMO has achieved considerable success to date in Australia/New Zealand and the United Kingdom, the IBC has balanced this against the macroeconomic and execution risks in achieving future plans and has unanimously concluded that the Scheme is a compelling option which realises attractive value for our shareholders.”*

Overview of the Scheme

ELMO, a leading cloud-based HCM solution provider, announces that it has entered into a SID with Manhattan Bondi HoldCo, Inc. (“**BidCo**”), a wholly-owned subsidiary of funds advised by K1, a leading enterprise software-focused investment firm, under which it is proposed that K1 will acquire (via BidCo) 100% of the shares in ELMO for \$4.85 cash per share by way of a Scheme of Arrangement.

K1 is a Los Angeles-based private investment firm focused exclusively on partnering with enterprise software companies, and has closed 34 investments in the last twelve months. K1 has invested in over 200 enterprise software companies since inception, working with management to create global category leaders through a combination of inorganic and organic growth initiatives. Notable past investments in other high growth Australian-based software companies include simPRO, Cyara, AroFlo and RosterLive.

Under the terms of the Scheme, ELMO shareholders will be entitled to receive \$4.85 per share in cash, subject to applicable conditions being satisfied or waived and the Scheme being implemented.

ELMO’s CEO and Co-Founder, Danny Lessem, has agreed to work together exclusively with K1 to seek to implement the Scheme pursuant to a co-operation voting and rollover agreement (subject to his directors’ duties and employment agreement with ELMO). As part of that co-operation agreement, Danny Lessem has agreed to roll approximately 70% of his shares owned or controlled in ELMO as at the date of this announcement⁷ into the private K1 vehicle (instead of receiving cash for those shares). As part of his co-operation agreement with K1, Danny Lessem has agreed to vote in favour of the Scheme (which will occur as a separate class of shareholder) and not accept or vote in favour of any competing proposal for the duration of that agreement. As at the date of this announcement, Danny Lessem owns or controls 11.0% of ELMO’s ordinary shares outstanding.

Certain management of ELMO, to be agreed at the appropriate time with K1, will also have the option to elect to roll a portion of their respective shares⁸ owned or controlled in ELMO into the private K1 vehicle (instead of receiving cash for those shares) and would also be classified as a separate class of shareholder with respect to the Scheme.

The Scheme Consideration implies a fully diluted Equity Value of approximately \$486 million¹ for ELMO, and represents:

- 100.4% premium to the last trading price of ELMO shares on 12 October 2022, being the final trading day prior to ELMO’s announcement that it had received approaches expressing interest in acquiring the Company (“**Undisturbed Date**”)²
- 94.6% premium to the 1-month VWAP³ of ELMO shares to the Undisturbed Date
- 84.4% premium to the 3-month VWAP⁴ of ELMO shares to the Undisturbed Date

⁷ Based on the value of those shares per the Scheme Consideration.

⁸ Final amount subject to election and terms of final agreement with K1

ELMO IBC unanimously recommends the Scheme

As previously announced on Thursday 13 October 2022, ELMO confirmed that it had received approaches expressing interest in acquiring the Company and was in discussions with select parties in the context of maximising shareholder value.

As part of this process, ELMO established an Independent Board Committee (“**IBC**”) comprising Barry Lewin, Kate Hill and Leah Graeve (in their capacity as Non-Executive Directors on the Board) to consider any confidential proposals and engage with potentially interested counterparties as required.

The ELMO IBC engaged in a robust review process with the assistance of financial and legal advisers. This included an evaluation of ELMO’s strategic plan as an independent company and the various operational and execution risks inherent in achieving this strategic plan. The IBC also considered a number of other non-binding expressions of interests for ELMO.

The ELMO IBC considers that the Scheme is in the best interests of shareholders and unanimously recommends that ELMO shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of ELMO shareholders.

Subject to the same qualifications, each ELMO IBC Director intends to vote all the ELMO shares that they hold or control at the time of the Scheme meeting in favour of the Scheme.

The ELMO IBC believe that this is an attractive offer for ELMO shareholders for the following reasons:

- **Significant premium:** Scheme Consideration represents a premium of over 100% to ELMO’s closing price of \$2.42 per share on Wednesday 12 October 2022 (the Undisturbed Date) and a 95% premium to ELMO’s 1-month VWAP of \$2.49 per share to the Undisturbed Date;
- **Certainty of value:** The 100% cash consideration provides ELMO shareholders with certainty of value and the opportunity to realise their investment in full for cash; and
- **Limited conditionality:** The Scheme is subject to FIRB approval and other conditions customary for transactions of this type and is not conditional on financing or due diligence.

Major shareholder voting intentions

JLAB Investments (No. 2) Pty Ltd (which has a relevant interest in 13.7% of ELMO’s ordinary shares outstanding as at the date of this announcement) and the Garber Family Trust (who have a relevant interest in 9.7% of ELMO’s ordinary shares outstanding as at the date of this announcement) (in aggregate, representing 23.4% of ELMO’s ordinary shares outstanding as at the date of this announcement) have both confirmed that they intend to vote, or recommend the voting of, all ELMO shares held or controlled by them in favour of the Scheme in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the transaction is in the best interest of ELMO shareholders.

Conditions and other terms

ELMO and BidCo have entered into the attached SID, which contains the terms upon which ELMO and BidCo will implement the Scheme. The key conditions of the Scheme include:

- receipt of required regulatory approvals including in relation to the Foreign Investment Review Board;
- the approval of ELMO shareholders of the Scheme at the Scheme meetings by the requisite majorities, and the approval of the Court, in accordance with the Corporations Act 2001 (Cth);

- expiration or early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended;
- no ELMO material adverse change, prescribed occurrences or material breach of representations and warranties as defined in the SID;
- an Independent Expert concluding that the Scheme is in the best interests of ELMO shareholders, and not changing or withdrawing that conclusion; and
- other conditions customary for a transaction of this nature.

The SID also includes exclusivity provisions customary for a transaction of this nature, the payment of a mutual break fee in certain prescribed circumstances and maximum limitations of liability provisions in favour of each party.

Indicative timetable and next steps

ELMO shareholders do not need to take any action in relation to the Scheme at this stage. A Scheme Booklet containing information in relation to the Scheme, reasons for the ELMO IBC recommendation, an Independent Expert's Report and details of the Scheme will be sent to ELMO shareholders in due course. It is anticipated that the Scheme will close in the first quarter of calendar year 2023 (subject to satisfaction or waiver of the relevant conditions). These dates are indicative and subject to change.

Advisers

The ELMO IBC has engaged UBS Securities Australia Limited as its financial adviser and Arnold Bloch Leibler as its legal adviser.

Authorised by:

This announcement was authorised by the IBC of ELMO.

- ENDS

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About ELMO

Established in 2002, ELMO Software offers cloud-based solutions for small businesses and mid-market organisations to manage people, process and pay. Spanning across Australia, New Zealand and the United Kingdom, ELMO operates on a software-as-a-service ("SaaS") business model, based on recurrent subscription revenues.

About K1

K1 is a global investment firm that builds category-leading enterprise software companies. K1 partners with strong management teams of high-growth technology businesses to help them achieve successful outcomes. With over 140 professionals, K1 and its operating affiliate, K1 Operations LLC, change industry landscapes with operationally focused growth strategies designed to rapidly scale portfolio companies. Since inception of the firm, K1 has partnered with over 200 enterprise software companies including industry leaders such as accessiBe, Atera, Checkmarx, Complysci, ControlUp, Cyara, Emburse, Employ, Granicus, HR Acuity, IronScales, Onit, RethinkFirst, Reveal-Brainspace, RFPIO, simPRO, Smarsh, XTM International and Zapproved. For more information, visit k1im.com and follow on LinkedIn.

Scheme Implementation Deed

Project Saturn

ELMO Software Limited
ACN 102 455 087

Manhattan Bondi HoldCo, Inc.



Arnold Bloch Leibler

Level 21, 333 Collins Street
Melbourne Victoria 3000 Australia

Level 24, Chifley Tower, 2 Chifley Square
Sydney NSW 2000 Australia

Scheme Implementation Deed

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Scheme Implementation Deed

Details

Date	26 October 2022
Parties	ELMO Software Limited ACN 102 455 087 (Ernie) of Level 27, 580 George Street, Sydney NSW 2000, Australia
	Manhattan Bondi HoldCo, Inc. (file number 7097622) (Bidder) of 1209 Orange Street, City of Wilmington, Delaware 19801, United States of America
Background	<p>A The parties have agreed to implement the Transaction on and subject to the terms and conditions of this deed.</p> <p>B The parties have agreed certain other matters in connection with the Transaction as set out in this deed.</p>

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context requires otherwise:

Advisers	means, in relation to an entity, its financiers, and any legal adviser, financial adviser, corporate adviser or other expert adviser or consultant who provides advisory services in a professional capacity to third parties and who has been engaged by that entity in connection with the Transaction by the entity.
Affiliate	means, in respect of a person (Primary Person), a person: <ul style="list-style-type: none">(a) Controlled directly or indirectly by a Primary Person;(b) Controlling directly or indirectly the Primary Person;(c) who is Controlled, directly or indirectly, by a person or persons who Control the Primary Person; or(d) directly or indirectly under the common Control of the Primary Person and another person or persons.
Announcement	means a public announcement by Ernie with respect to the Transaction in a form agreed to in writing by Ernie and the Bidder prior to signing of this deed.
ASIC	means the Australian Securities and Investments Commission.

Associate	has the meaning set out in section 12 of the Corporations Act, but so that section 12(1) of the Corporations Act will be treated to include a reference to this deed and deem that Ernie is the 'designated body'.
ASX	means, as the context requires, ASX Limited (ABN 98 008 624 691) or the securities market conducted by it.
Bank	means a corporation authorised by law to carry on the general business of banking in Australia.
Bidder Affiliate	means any Affiliate of any investment fund, vehicle or managed account advised or managed by K1 Investment Management, LLC or any of its Affiliates.
Bidder Affiliate Notification	has the meaning given to it in clause 4.2(a).
Bidder Deal Team	means Roy Liao, James Fearis, Stan Gaudion, Shane Penner and Evan Jones.
Bidder Group	means the Bidder and any Affiliate of the Bidder and a reference to " Bidder Group Member " is to either the Bidder or any Affiliate of the Bidder.
Bidder Indemnified Parties	means each Bidder Group Member and their respective Representatives.
Bidder Information	means information regarding the Bidder Group (including in relation to HoldCo and the HoldCo Securities), that is provided by or on behalf of any Bidder Group Member to Ernie or the Independent Expert in writing: <ul style="list-style-type: none"> (a) for inclusion in the Scheme Booklet; (b) to enable applications for Regulatory Approvals to be made; (c) otherwise in compliance with the Bidder's obligations under clauses 5.2(a) and 5.4(h).
Bidder Proposal	has the meaning given in clause 11.6(a)(v).
Bidder Proposal Period	has the meaning given in clause 11.6(a)(v).
Bidder Representations and Warranties	means the representations and warranties set out in Schedule 1.
Board	means the board of directors of Ernie from time to time.
Break Fee	means \$4,859,760.
Business Day	means a day on which Banks are open for general banking business in Sydney, excluding Saturdays, Sundays and public holidays.

Cash Consideration	means \$4.85 for each Scheme Share.
Change of Control Requirements	has the meaning given to it in clause 6.6(a)(i).
Claim	means any allegation, claim, notice, demand, action, proceeding, litigation, investigation or judgement however arising and whether present or future, fixed or unascertained, actual or contingent.
Competing Proposal	<p>means any offer, proposal, expression of interest, transaction, agreement or arrangement (other than the Transaction), which, if entered into or ultimately completed substantially in accordance with its terms, would result in a person (either alone or together with any Associate):</p> <ul style="list-style-type: none"> (a) directly or indirectly acquiring a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or similar transaction or arrangement) or a Relevant Interest in, or control of, or becoming the holder of, more than 20% of the Securities (other than as custodian, nominee or bare trustee); (b) directly or indirectly acquiring, becoming the holder of, or otherwise having a right to acquire, a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or similar transaction or arrangement) in, or control of, the whole or substantially all of the businesses and assets of Ernie or the businesses and assets of the Ernie Group; (c) otherwise acquiring Control of Ernie; (d) otherwise directly or indirectly acquiring or merging, or being involved in an amalgamation or reconstruction (as those terms are used in s413(1) of the Corporations Act), with Ernie or a material Subsidiary of Ernie; or (e) requiring Ernie to abandon, or otherwise fail to proceed with, the Transaction, <p>whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, reverse takeover, capital reduction, buy-back, sale or purchase of shares, other Securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company structure (or other synthetic merger), deed of company arrangement, any debt for equity arrangement recapitalisation, refinancing or other transaction or arrangement.</p> <p>For the avoidance of doubt, each successive material modification or variation of any offer, proposal, expression of interest, transaction, agreement or arrangement in relation to the Competing Proposal will constitute a new Competing Proposal.</p>
Conditions	<p>means the conditions set out in clause 3.1 and "Condition"</p> <p>means any one of them.</p>

Confidentiality Deed	means the confidentiality deed between Ernie and K5 Private Investors, L.P. dated 17 September 2022.
Control	has the meaning given in section 50AA of the Corporations Act, and, for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person, and, in respect of the Bidder, will include any fund, account, client, limited partnership or other collective investment vehicle or other person who is managed or advised by the Bidder and any Affiliate of the Bidder, and the terms “ Controlled ” and “ Controlling ” will have corresponding meanings.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Corporations Regulations	means the <i>Corporations Regulations 2001</i> (Cth).
Court	means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act as may be agreed to in writing by Ernie and the Bidder.
Deed Poll	means a deed poll substantially in the form of Attachment C (or such other form as Ernie and the Bidder agree in writing) under which each of the Bidder and HoldCo covenants in favour of the Scheme Shareholders to perform the obligations attributed to it under the Scheme.
Delivery Time	means 8.00 am on the Second Court Date.
Disclosure Materials	means the documents and written information contained in the online data room made available (including all written responses provided by or on behalf of the Ernie Group in response to written questions or requests for information) to the Bidder and their Representatives prior to 11 am on 25 October 2022, the index of which has been initialled by, or on behalf of, the parties for identification.
Effective	means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.
Effective Date	means the date on which the Scheme becomes Effective.
Election	means an election by a Relevant Shareholder to receive their Scheme Consideration partly in the form of Scrip Consideration and partly in the form of Cash Consideration, made in accordance with clause 4.4.
Election Form	means a form issued by or on behalf of Ernie for the purposes of a Relevant Shareholder making an Election in a form agreed to by Ernie and the Bidder.

Election Time	means 5:00 pm on the third Business Day before the date of the Scheme Meeting, or such other date as is agreed in writing between Ernie and the Bidder.
Encumbrance	means a mortgage, hypothecation, charge (whether fixed or floating), pledge, lien, encumbrance, security interest (including a security interest as defined in section 12 of the <i>Personal Property Securities Act 2009</i> (Cth)), title retention, bill of sale, caveat, pledge, claim, trust arrangement, preferential right, trust arrangement, contractual right of set-off or any other form of encumbrance, security agreement or arrangement in favour of any person, whether registered or unregistered.
End Date	means the date that is 9 months after the date of this deed, or such other date as is agreed in writing between the Bidder and Ernie.
Equity Commitment Letter	means the binding, executed commitment letter dated on or before the date of this deed and addressed to one or more Bidder Group Members and Ernie.
Ernie Director	means a director of Ernie from time to time.
Ernie Equity Incentives	means any rights or entitlements to Ernie Shares (whether granted, agreed to be granted, or proposed to be granted) issued under employee incentive arrangements of the Ernie Group to acquire an Ernie Share (including options, performance rights and share rights), as Fairly Disclosed in the Disclosure Materials.
Ernie Group	means Ernie and each of its Related Bodies Corporate and a reference to a “ Ernie Group Member ” is to Ernie or any of its Related Bodies Corporate.
Ernie Indemnified Parties	means each Ernie Group Member and their respective Representatives.
Ernie Information	means all the contents of the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.
Ernie Prescribed Occurrence	means the occurrence of any of the following on or after the date of this deed: <ul style="list-style-type: none"> (a) Ernie converting all or any of its shares into a larger or smaller number of shares (as contemplated under section 254H of the Corporations Act or otherwise); (b) any Ernie Group Member resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming any of its shares; (c) Ernie commencing, continuing or implementing a buy-back (on-market or otherwise) of any of its shares, irrespective of whether such buy-back has been announced on the ASX, Fairly Disclosed in the Disclosure Materials or within the actual knowledge of the Bidder prior to or as at the date of this deed;

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- (d) any Ernie Group Member:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
 - (e) any Ernie Group Member agreeing to pay, declaring, determining as payable, paying or distributing, or incurring a liability to pay or make, any distribution, special dividend, bonus or other form of distribution of its profits or assets or returning any capital to its members (whether in cash or in specie);
 - (f) an Ernie Group Member issuing securities (including without limitation shares), or granting an option, performance right, phantom performance right or shadow performance right over its securities, or agreeing to make such an issue or grant such an option or right;
 - (g) an Ernie Group Member issuing or agreeing to issue securities convertible into shares or any debt securities (including any hybrid securities);
 - (h) an Ernie Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares, other than in connection with any action that is undertaken or that otherwise occurs in accordance with clause 5.1;
 - (i) an Ernie Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property, whether by any single transaction or series of related or similar transactions;
 - (j) an Ernie Group Member granting or otherwise creating, or agreeing to grant or otherwise create, an Encumbrance over the whole, or a substantial or material part, of its business, assets or property of the Ernie Group Member;
 - (k) an Ernie Group Member being, or becoming, Insolvent;
 - (l) an Ernie Group Member ceasing, or threatening to cease, the whole, or a substantial part, of its business;
 - (m) any Ernie Group Member making any change to its constitution or constituent documents, other than where an Ernie Group Member that is not material in the context of the Ernie Group (taken as a whole) makes a change to its constitution that does not materially affect the Transaction or the Ernie Group (or its business); or
 - (n) any Ernie Group Member agreeing or otherwise committing to do any of the things set out in paragraphs (a) to (m) of this definition,

excluding, in the case of each paragraph above of this definition, any such occurrence that:

- (o) is required by law or an order of a court or Government Agency, including the Listing Rules;
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	<p>(p) is required or expressly permitted to be done pursuant to this deed or to implement the Scheme;</p> <p>(q) took place with the prior written consent of the Bidder;</p> <p>(r) was Fairly Disclosed by Ernie in an announcement made to the ASX or a document lodged with ASIC before the date of this deed;</p> <p>(s) was Fairly Disclosed in the Disclosure Materials; or</p> <p>(t) in connection with any action that is undertaken or that otherwise occurs in accordance with clause 5.10.</p>
Ernie Registry	means Link Market Services Limited ABN 54 083 214 537 or any replacement provider of share registry services to Ernie.
Ernie Representations and Warranties	means the representations and warranties of Ernie set out in Schedule 2.
Ernie Share	means a fully paid ordinary share in the capital of Ernie.
Ernie Shareholder	means each person who is registered in the Share Register as the holder of Ernie Shares.
Exclusivity Period	<p>means the period commencing on date of this deed and ending on the earliest of:</p> <p>(a) the date this deed is terminated in accordance with its terms;</p> <p>(b) the Effective Date of the Scheme; and</p> <p>(c) the End Date.</p>
Existing Financing Arrangement	means any existing financing agreement or arrangement for the provision of Financial Indebtedness by a third party to an Ernie Group Member (including swap and derivative agreements or arrangements).
Fairly Disclosed	means, in respect of information disclosed to the Bidder or any of its Representatives, disclosed in sufficient detail so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Transaction in the industries in which Ernie operates, to identify the nature and scope of the relevant fact, matter, event or circumstance.
FATA	means the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth).
Financial Indebtedness	means any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised, debit balances at banks or financial institutions, or any financial accommodation or other liabilities in the nature of borrowed money (together with all interest, fees and charges thereon), whether secured or unsecured, including under or in respect of any:

- (a) advance, bill, bond, debenture, loan, note or similar instrument;
- (b) drawing, acceptance, endorsement, collecting or discounting arrangement;
- (c) assignment of receivables;
- (d) guarantee or letter of credit;
- (e) finance or capital lease;
- (f) swap, option, hedge, forward, futures or similar transaction;
- (g) interest or non-interest bearing loans, including any overdraft facility;
- (h) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

Financing Default	means any “event of default” (however described), any “review event” (however described) or any other termination event (however described) under and for the purposes of any Existing Financing Arrangement.
First Court Date	means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing Ernie to convene the Scheme Meeting to consider the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard).
FY23 Budget	means the budget for the Ernie Group for the 2023 financial year, including the materials disclosed in folder 04.03 of the Data Room.
Government Agency	means any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Australia, or elsewhere, including the United Kingdom, the United States or New Zealand, including any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and the ASX or any other stock exchange.
Headcount Test	means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Ernie Shareholders present and voting, either in person or by proxy.
Hero Brands SHD	means the securityholder’s deed in relation to Hero Brands Pty Ltd (ACN 605 200 020) in its personal capacity and as trustee of the Hero Brands Trust between Ernie and Hero Brands Group Pty Ltd (ACN 168 033 029) as trustee of Hero Brands Group Unit Trust.

HoldCo	means a special purpose Bidder Affiliate incorporated for the purposes of issuing Scrip Consideration to the Relevant Shareholders, being the direct or indirect holding company of the Bidder.
HoldCo Securities	means voting securities in the capital of HoldCo.
HSR Act	means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.
IBC	means the Independent Board Committee, being a subcommittee of the Board, that has been established to consider the Transaction and which comprises the IBC Directors.
IBC Directors	means each of Barry Lewin, Kate Hill and Leah Greave.
Implementation Date	means the fifth Business Day after the Scheme Record Date or such other date as agreed in writing between the Bidder and Ernie.
Implementation Planning Committee	a committee comprised of two senior Ernie executives and two senior Bidder Group Member executives, and other persons as agreed by the parties.
Independent Expert	means the independent expert in respect of the Scheme appointed in good faith by Ernie to opine on whether the Scheme is in the best interests of Ernie Shareholders and to prepare the Independent Expert's Report.
Independent Expert's Report	means the report to be issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests of Ernie Shareholders, and includes any update of that report by the Independent Expert.
Insolvent	means in relation to a person: <ul style="list-style-type: none"> (a) it is subject to any arrangement, compromise, assignment, moratorium or composition with its creditors generally or is otherwise protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved in writing by the other parties to this deed); (b) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) in connection with that person, which could reasonably result in any of the events described in paragraphs (a) to (d) of this definition; (c) the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of

	<p>the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;</p> <p>(d) it is deregistered as a company or otherwise dissolved;</p> <p>(e) it suspends or threatens to suspend payment of its debts as and when they become due;</p> <p>(f) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;</p> <p>(g) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this deed reasonably deduces it is so subject);</p> <p>(h) it executes a deed of company arrangement;</p> <p>(i) it is otherwise unable to pay its debts when they fall due; or</p> <p>(j) something analogous to anything set out in paragraphs (a) to (i) (inclusive) of this definition happens in connection with that person under the law of any jurisdiction.</p>
Listing Rules	means the official listing rules and requirements from time to time of the ASX.
Loss	means any debt or other monetary liability (including for tax) or penalty, fine or payment or any damages, losses, costs (including legal costs on a solicitor and client basis), charges, outgoings or expenses of whatever description (including interest) however arising and whether present, unascertained, immediate, future or contingent.
Material Adverse Change	<p>means any event, circumstance, occurrence, or matter occurring after the date of this deed, or occurring before the date of this deed but only announced, publicly disclosed, or becoming known to the Bidder after the date of this deed, that has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, circumstances, occurrences, or matters:</p> <p>(a) a reduction of the consolidated annual recurring revenue of the Ernie Group to a level that is less than 95% of \$111 million (being the consolidated annual recurring revenue at 30 September 2022), calculated using a consistent methodology and where Great British Pounds are converted into Australian dollars using a GBP:AUD exchange rate of 1.7138 and New Zealand Dollars are converted into Australian dollars using a NZD:AUD exchange rate of 0.88, where applicable, to remove the impact of exchange rate movements and facilitate comparability of the Ernie Group's consolidated annual recurring revenue; or</p> <p>(b) a reduction in Net Cash of the Ernie Group after the date of this deed and before the Delivery Time to an amount that is less than \$27.5 million, calculated using a consistent methodology and where Great British Pounds are converted into Australian dollars using a GBP:AUD exchange rate of 1.7138 and New Zealand Dollars are</p>

converted into Australian dollars using a NZD:AUD exchange rate of 0.88, where applicable, to remove the impact of exchange rate movements,

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

- (c) that was Fairly Disclosed in the Disclosure Materials;
- (d) expressly required to be done or procured by Ernie pursuant to this deed or the Scheme;
- (e) that was (including its impact) within the actual knowledge of the Bidder Deal Team prior to the date of this deed (which does not include mere knowledge of the risk of an event, circumstance, occurrence, or matter happening);
- (f) which the Bidder has previously approved or requested in writing;
- (g) which was, or the impact of which was, Fairly Disclosed by Ernie in an announcement made to the ASX or a public document lodged with ASIC before the date of this deed;
- (h) which relates to the costs and expenses incurred by the Ernie Group associated with the Scheme including all fees payable to external advisors of the Ernie Group and the funding of same, to the extent such amounts are Fairly Disclosed in the Disclosure Materials;
- (i) which is or arises from changes in general economic or business conditions applicable to the industry in which the Ernie Group operates (including interest rates and currency exchange rates), other than where such matters have a materially disproportionate effect on the Ernie Group as compared to other participants in the industry in which the Ernie Group operates;
- (j) arising from the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof) after the date of this deed, including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof), and including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues or gatherings, having regard to any applicable recommendations, guidance or directions of a Government Agency;
- (k) arising out of any option being exercised (or not being exercised) under the Hero Brands SHD (other than as a result of a breach of clauses 6.1(f)(xxi) or 6.6);
- (l) arising as a result of any generally applicable change in law (including subordinate legislation), regulation, directions, orders, accounting standards or principles or governmental policy, or the interpretation of any of them; and
- (m) arising from any act of terrorism, outbreak, or escalation of war (whether or not declared), major hostilities, an act of God, natural disaster, lightning, storm, flood, bushfire,

earthquake, explosion, cyclone, tidal wave or landslide, on or after the date of this deed.

Material Agreements	means all agreements, arrangements or understandings to which an Ernie Group Member is a party and which are material to the financial position, performance or operation of the business of the Ernie Group.
Net Cash	means the amount of cash, cash equivalents and short term interest bearing deposits (where the terms "cash" and "cash equivalents" are as defined in the Australian Accounting Standards) of the Ernie Group as at the relevant date, but excluding the aggregate proceeds received by the Ernie Group in connection with the vesting and exercise of the Ernie Equity Incentives (if any) in accordance with clause 5.10.
Officer	means, in relation to any entity, any of its directors or officers.
Policy	has the meaning given in clause 8.4.
PPSR	means the register of security interests in accordance with the <i>Personal Property Securities Act 2009</i> (Cth).
Recommendation	has the meaning given in clause 5.5.
Regulatory Approvals	means the approvals set out in clause 3.1(g).
Reimbursement Amount	means \$4,859,760.
Related Bodies Corporate	has the meaning given in section 9 of the Corporations Act and includes any body corporate that would be a related body corporate for the purposes of the Corporations Act if section 48(2) of the Corporations Act was omitted.
Relevant Breach	has the meaning given in clause 12.9(b)(i).
Related Entity	of a party means another entity which: (a) is a Related Body Corporate of the first entity; (b) is in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the party; or (c) the party Controls.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.
Relevant Person	means in relation to a person, their Related Entities, Associates, Affiliates and Representatives.
Relevant Shareholder	means an Ernie Shareholder that is, or an Affiliate or Related Entity of, an executive management team member of the Ernie Group agreed in writing to be a Relevant Shareholder for the purposes of this definition between Ernie and the Bidder on or

	prior to, or as soon as practicable following, the date of this deed.
Reorganisation Event	<p>means:</p> <ul style="list-style-type: none"> (a) a bonus issue of shares in an Ernie Group Member; (b) issuance or authorisation of issues of any other securities in respect of, in lieu of, or in substitution for shares of the share capital of an Ernie Group Member or other equity or voting interests; (c) purchase, redeem, or otherwise acquire any share capital or any other securities of any Ernie Group Member, or any options, warrants, calls, or rights to acquire any such shares or other securities; (d) a sub-division, consolidation, combination or reclassification of any shares or other equity or voting interests, in an Ernie Group Member; or (e) any other reorganisation, reclassification or reconstruction of an Ernie Group Member's capital where that Ernie Group Member neither pays nor receives cash.
Representative	<p>means, in relation to a party:</p> <ul style="list-style-type: none"> (a) each of the party's Related Entities; and (b) each of the members Officers, employees, Advisers and agents of the party or of its Related Entities.
RG 60	means Regulatory Guide 60 issued by ASIC.
Scheme	<p>means a members' scheme of arrangement under Part 5.1 of the Corporations Act between Ernie and the Scheme Shareholders in respect of all Scheme Shares, substantially in the form attached as Attachment B or in such other form as Ernie and the Bidder agree in writing, subject to any alterations or conditions that are:</p> <ul style="list-style-type: none"> (a) agreed to in writing by Ernie and the Bidder and approved by the Court; or (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by Ernie and the Bidder.
Scheme Booklet	means the information described in clause 5.1(a) to be approved by the Court and despatched to the Ernie Shareholders and which must include the Scheme, an explanatory statement (complying with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules), an independent expert's report, a copy or summary of this deed, a copy of the executed Deed Poll, notices of meeting and proxy form.
Scheme Consideration	means the Cash Consideration and, if applicable, Scrip Consideration, to be provided to each Scheme Shareholder for the transfer to the Bidder of each Scheme Share in accordance with clause 4.3 and the terms of the Scheme.

Scheme Meeting	means the meetings of Ernie Shareholders, ordered by the Court to be convened under section 411(1) of the Corporations Act, at which Ernie Shareholders will vote on the Scheme and includes any meeting held following any adjournment or postponement of that meeting.
Scheme Record Date	means 7.00 pm on the fifth Business Day after the Effective Date or such other date as agreed in writing between the Bidder and Ernie.
Scheme Share	means an Ernie Share held by a Scheme Shareholder at the Scheme Record Date.
Scheme Shareholder	means a person who is an Ernie Shareholder as at the Scheme Record Date.
Scrip Consideration	means such number of HoldCo Securities per Scheme Share as determined by the Bidder, to be determined on or prior to the First Court Date.
Second Court Date	means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned application is heard).
Securities	means shares, debentures, stocks, bonds, notes, interests in a managed investment scheme, units, warrants, options, derivative instruments and any other securities which are convertible into shares in any Ernie Group Member.
Share Register	means the register of members of Ernie maintained in accordance with the Corporations Act.
Share Splitting	means the splitting by a holder of Ernie Shares into two or more parcels of Ernie Shares whether or not it results in any change in the beneficial ownership of the Ernie Shares.
Subsidiary	has the meaning given to that term by section 9 of the Corporations Act.
Superior Proposal	<p>means a bona fide Competing Proposal received after the date of this deed which the IBC determines, acting in good faith and after receiving advice from its legal and financial advisers:</p> <ul style="list-style-type: none"> (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal; and (b) would, if completed substantially in accordance with its terms, be more favourable to Ernie Shareholders (other than the Relevant Shareholders) as a whole, than the Transaction (as the Transaction may be amended or varied following application of the matching right set out in clause 11.6), <p>taking into account all terms and conditions (including the executability) of the Competing Proposal, the identity, reputation</p>

	and financial condition of the person making the proposal, and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, any timing considerations, any conditions precedent, whether the person making the proposal holds an interest in a competitor or a potential competitor of Ernie, or other matters affecting the probability of the proposal being completed).
Takeovers Panel	means the Takeovers Panel constituted under the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
Third Party	means a person other than Ernie, a Bidder Group Member and each of their respective Related Bodies Corporate and Associates.
Timetable	means the indicative timetable for the implementation of the Transaction set out in Attachment A with such modifications as may be agreed in writing by the parties.
Transaction	means the acquisition by the Bidder of the Scheme Shares by implementation of the Scheme.
Treasurer	means the Treasurer for the time being of the Commonwealth of Australia.
Unacceptable Circumstances	has the meaning set out in section 657A of the Corporations Act.
Voting Intention	has the meaning given in clause 5.5.

1.2 Words and expressions

In this deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this deed;
- (e) a reference to this deed includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) the background or recitals to this deed are adopted as and form part of this deed;
- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;

- (j) a reference to a time is a reference to the time in Sydney, Australia;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it; and
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation.

1.3 Other rules of interpretation

In this deed, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by Bank cheque or by credit of cleared funds to a Bank account specified by the recipient;
- (b) **(consents and approvals)** if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement may be given conditionally or unconditionally or withheld in that party's absolute discretion;
- (c) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this deed is given by them or for their benefit jointly and severally;
- (d) **(Business Days)** if:
 - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
 - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period);

- (e) **(reasonable or best endeavours)** an obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to pay money:
- (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including advisers' costs, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed,
- or to provide other valuable consideration to or for the benefit of any person or to agree to commercially onerous or unreasonable conditions;
- (f) **(inconsistency within document)** if a clause of this deed is inconsistent with a schedule or annexure of this deed, the clause prevails to the extent of the inconsistency;
- (g) **(Corporations Act)** a term defined in the purposes of the Corporations Act has the same meaning when used in this deed; and
- (h) **(Listing Rules)** a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

2 Agreement to propose Scheme

- 2.1 Ernie agrees to propose and implement the Scheme on and subject to the terms of this deed.
- 2.2 The Bidder agrees to assist Ernie in proposing and implementing the Scheme on and subject to the terms of this deed.
- 2.3 Ernie and the Bidder agree to implement the Transaction subject to, and on the terms and conditions of, this deed.

3 Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme (including the obligations of the Bidder under clause 4.3) will not become binding, until each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in clause 3.3:

- (a) **(Shareholder approval)**: Ernie Shareholders approve the Scheme at the Scheme Meetings by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (b) **(Court approval)**: the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;

- (c) **(No restraints)**: no law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree issued by any court of competent jurisdiction or by any Government Agency, or other legal restraint or prohibition preventing, prohibiting or impeding the implementation of the Transaction, and no steps have been taken by any court of competent jurisdiction or Government Agency to dispose of to the reasonable satisfaction of Ernie and the Bidder the effect of any of the above, in each case as at the Delivery Time;
- (d) **(Independent Expert)**: the Independent Expert issues the Independent Expert's Report which concludes that in its opinion the Scheme is in the best interests of Ernie Shareholders and the Independent Expert maintains that formal opinion (including by not withdrawing, qualifying or changing that opinion) at all times up to the Delivery Time;
- (e) **(No Ernie Prescribed Occurrence)**: no Ernie Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
- (f) **(No Material Adverse Change)**: no Material Adverse Change occurs between the date of this deed and the Delivery Time;
- (g) **(Regulatory Approvals)**:
- (i) **(ASIC and ASX)** before the Delivery Time, ASIC and ASX have issued or provided such consents or approvals or have done such other acts which the Bidder and Ernie agree in writing are necessary or desirable to implement the Transaction, including to give effect to clause 5.10, and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time;
 - (ii) **(Foreign Investment Review Board)** before the Delivery Time, either:
 - (A) the Treasurer (or their delegate) has provided a notice in writing stating, or to the effect that, there are no objections under the FATA to the Bidder acquiring the Scheme Shares under the Scheme, either not subject to any conditions or subject only to any of the following:
 - (1) tax related conditions or undertaking which are consistent with the 'standard' form of tax conditions in items 1 to 6 of section D published in FIRB's Guidance Note 12 as last updated on 9 July 2021; or
 - (2) on conditions that are acceptable to Bidder acting reasonably; or
 - (B) the Treasurer becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the acquisition of the Scheme Shares by the Bidder; or
 - (C) if an interim order is made under FATA in respect of the acquisition by the Bidder of the Scheme Shares, the subsequent period for making a final order prohibiting the acquisition of the Scheme Shares by the Bidder elapses without a final order being made;

- (iii) **(HSR)** any waiting period applicable to the Scheme under the HSR Act shall have expired or been terminated; and
- (iv) **(Government Agency)** all other approvals or consents of a Government Agency which the Bidder and Ernie agree in writing are necessary or desirable to implement the Transaction are obtained;
- (h) **(Ernie Representations and Warranties)**: the Ernie Representations and Warranties being true and correct in all material respects (subject to the qualifications in clause 7.5) on the date of this deed and at the Delivery Time;
- (i) **(Bidder Representations and Warranties)**: the Bidder Representations and Warranties being true and correct in all material respects on the date of this deed and at the Delivery Time;
- (j) **(No change of Recommendation)**: between the date of this deed and the date of the Scheme Meeting, no IBC Director having changed, qualified or withdrawn their Recommendation.

3.2 Reasonable endeavours

- (a) The Bidder and Ernie must use their respective reasonable endeavours to procure that:
 - (i) each Condition is satisfied as soon as possible after the date of this deed and continues to be satisfied at all times until the last time they are to be satisfied (as the case may be); and
 - (ii) there is no occurrence within the control of the Bidder or Ernie (as the context requires) that would prevent any of the Conditions which such party must use reasonable endeavours to satisfy, being satisfied and continuing to be satisfied at all times until the last time they are to be satisfied.
- (b) Without limiting clauses 3.5 and 3.6, Ernie and the Bidder must:
 - (i) consult and co-operate fully with the other party in relation to the satisfaction of the Conditions, including in relation to all material communications with any Government Agency in relation to Regulatory Approvals;
 - (ii) promptly apply for all relevant Regulatory Approvals for which it is responsible and keep the other party reasonably informed of progress in relation to the Regulatory Approval (including in relation to any matters raised by, or conditions or other arrangements proposed by the relevant Government Agencies);
 - (iii) prior to engaging with the relevant Government Agencies, provide the other party with a copy of all draft applications, submissions and materials proposed to be provided to the relevant Government Agencies (redacted so as to protect the commercially sensitive information) for reasonable prior consultation;
 - (iv) provide the other party with a copy of applications and submissions for Regulatory Approvals and all materials provided to, and material

communications with, any Government Agency in relation to Regulatory Approvals;

- (v) take all the steps for which it is responsible as part of the Regulatory Approvals process;
- (vi) respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time;
- (vii) provide the other with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals and keep the other reasonably informed of progress in relation to the applications for Regulatory Approvals; and
- (viii) so far as it is able, allow the other and its Representatives the opportunity to be present and make submissions at any meetings with any regulatory body relating to the Regulatory Approvals in respect of the Scheme,

provided that a party may withhold or redact information or documents from the other if and to the extent that they are either confidential or non-public to a Third Party or commercially sensitive and confidential to an Ernie Group Member or Bidder Group Member (as applicable).

3.3 Waiver of Conditions

- (a) The Conditions in clauses 3.1(a) ('Shareholder approval'), 3.1(b) ('Court approval'), 3.1(c) ('No restraints'), 3.1(g)(ii) ('Foreign Investment Review Board') and 3.1(g)(iii) ('HSR') cannot be waived.
- (b) The Conditions in clauses 3.1(g)(i) ('ASIC and ASX') and 3.1(g)(iv) ('Government Agency') are for the benefit of both the Bidder and Ernie and any breach or non-fulfilment of any such Condition may only be waived with the written consent of each of the Bidder and Ernie (each in their absolute discretion).
- (c) The Conditions in clauses 3.1(e) ('No Ernie Prescribed Occurrence'), 3.1(f) ('No Material Adverse Change'), 3.1(h) ('Ernie Representations and Warranties') and 3.1(j) ('No change of Recommendation') are for the benefit of the Bidder and any breach or non-fulfilment of any such Condition may only be waived by the Bidder (in its absolute discretion) by notice in writing to Ernie.
- (d) The Conditions in clauses 3.1(d) ('Independent Expert') and 3.1(i) ('Bidder Representations and Warranties') are for the benefit of Ernie and any breach or non-fulfilment of any such Condition may only be waived by Ernie (in its absolute discretion) by notice in writing to the Bidder.
- (e) A party entitled to waive a Condition under this clause 3.3 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the Delivery Time.

3.4 Termination on failure of Condition

- (a) If any event occurs which would, does or will prevent any of the Conditions being satisfied, or there is an occurrence that would, does or will prevent any of the Conditions being satisfied by the time and date specified in this deed for its satisfaction, or such Condition is otherwise not satisfied by that specified time and date and the breach or non-fulfilment of the relevant Condition that has

occurred or would otherwise occur has not been or cannot be waived in accordance with clause 3.3, or the Scheme has not otherwise become Effective on the End Date, then the Bidder and Ernie must consult in good faith to:

- (i) consider and if agreed determine whether the Transaction may proceed by way of alternative means or methods;
 - (ii) consider and if agreed change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by the Bidder and Ernie (being a date no later than 5 Business Days before the End Date); or
 - (iii) consider and if agreed extend the relevant time and date specified in this deed for the satisfaction of that Condition and / or the End Date (as applicable).
- (b) If the Bidder and Ernie are unable to reach agreement under clause 3.4(a) within 10 Business Days after becoming aware of the relevant occurrence or relevant date or by the End Date, then unless that Condition is waived by the Bidder or Ernie as provided in clause 3.3, then either the Bidder or Ernie may terminate this deed by notice in writing to the other party without any liability to any party because of that termination, unless (i) the relevant occurrence or the failure of the Condition to be satisfied arises out of a breach of clauses 3.2 or 3.5 in which case the party in breach will not be entitled to so terminate (for the avoidance of doubt, in such circumstances, whichever of Ernie and the Bidder is not the party in breach of clauses 3.2 or 3.5 is entitled to terminate this deed) or (ii) the relevant Condition is stated in clause 3.3 to be for the sole benefit of the other party.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination, on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.

3.5 Notifications

- (a) The Bidder and Ernie must:
- (i) keep the other promptly and reasonably informed of the steps it has taken and of any material progress towards satisfaction of the Conditions;
 - (ii) promptly notify the other in writing if it becomes aware that any Condition has been satisfied and provide reasonable evidence of the same; and
 - (iii) promptly (and in any event within 2 Business Days) notify the other in writing if it becomes aware of an event or occurrence that would, does, will, or would reasonably be likely to:
 - (A) cause a breach or non-fulfilment of any of the Conditions; or
 - (B) otherwise mean that any Condition is or has become incapable of being satisfied,

before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition is not otherwise satisfied by that time and date (including, for the avoidance of doubt, if Ernie Shareholders do not agree to the Scheme at the Scheme Meeting by the requisite majorities (having regard to the respective obligations of each party under clause 3.2)).

- (b) Upon receipt by a party of a notice given under clause 3.5(a)(iii), that party must give written notice to the other party as soon as possible (and in any event within 2 Business Days) as to whether or not it waives (if entitled to do so) the breach or non-fulfilment of the relevant Condition.

3.6 Certificate

Ernie and the Bidder must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not, as at the Delivery Time, all the Conditions (other than the Condition under clause 3.1(b) ('Court approval')) have been satisfied or waived in accordance with the terms of this deed.

3.7 Scheme voted down because of Headcount Test

If the Scheme is not approved by Ernie Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Ernie or the Bidder considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Ernie must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Ernie to represent it in Court proceedings related to the Scheme, in consultation with the Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

3.8 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- (a) in the case of the Condition set out in clause 3.1(g) ('Regulatory Approvals') - the relevant Government Agency makes or has made a final adverse determination in writing to the effect that it will not provide the required approval or consent; and
- (b) in all other cases - there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this deed).

4 Transaction steps

4.1 Scheme

- (a) Ernie must propose the Scheme to the Ernie Shareholders on and subject to the terms of this deed and use reasonable endeavours to do so substantially in accordance with the Timetable.
- (b) The parties acknowledge and agree that subject to clause 3.1, on the Implementation Date all of the Scheme Shares will be transferred to the Bidder and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the Scheme Consideration in accordance with the terms of the Scheme.

4.2 Bidder may nominate a Bidder Affiliate

- (a) The Bidder may nominate any Bidder Affiliate to acquire all of the Scheme Shares under the Scheme by giving written notice to Ernie on or before the date that is five Business Days before an advanced draft of the Scheme Booklet is submitted to ASIC for review (**Bidder Affiliate Notification**).
- (b) If the Bidder nominates a Bidder Affiliate to acquire all of the Scheme Shares under the Scheme, then:
 - (i) references in this deed to the Bidder acquiring the Scheme Shares under the Scheme, or taking any other action under or in respect of the Scheme, are to be read as references to the Bidder Affiliate doing so;
 - (ii) the Bidder and the Bidder Affiliate will both enter into the Deed Poll together with HoldCo;
 - (iii) the Bidder must procure (and undertakes and warrants to Ernie that it will procure) that:
 - (A) the Bidder Affiliate complies with the Bidder's obligations under, and completes the acquisition in accordance with the terms of, this deed, the Scheme and the Deed Poll (**Bidder Obligations**); and
 - (B) without affecting the validity of the Equity Commitment Letter while on foot, an equity commitment letter is provided in favour of the Bidder Affiliate, in the same form and on the same terms as the Equity Commitment Letter (with references to the Bidder replaced with references to the Bidder Affiliate) at which point the Equity Commitment Letter may be terminated by the Bidder;
 - (iv) despite clauses 4.2(b)(i) to 4.2(b)(iii), the Bidder will continue to be bound by all of the Bidder Obligations, and will not be released from any Bidder Obligations or liabilities under this deed, the Scheme or the Deed Poll following the Bidder Affiliate Notification; and
 - (v) the Bidder unconditionally and irrevocably guarantees to Ernie the due and punctual performance by the Bidder Affiliate of the Bidder Obligations. The obligation of the Bidder under this clause 4.2(b)(v) is a principal and continuing obligation and remains in full force and effect

until all the Bidder Obligation have been fully discharged. The liability of the Bidder under this clause 4.2(b)(v) is not affected by anything which, but for this clause 4.2(b)(v), might operate to release or exonerate the Bidder in whole or in part from its obligations.

4.3 Scheme Consideration

- (a) If the Scheme becomes Effective:
 - (i) each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder at the Scheme Record Date; and
 - (ii) all of the Scheme Shares held by a Scheme Shareholder will be transferred to the Bidder,subject to and in accordance with the terms of the Scheme.
- (b) The Bidder covenants in favour of Ernie (in Ernie's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to the Bidder of each Scheme Share under the terms of the Scheme:
 - (i) on the Implementation Date, the Bidder will accept that transfer; and
 - (ii) will provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them,in each case in accordance with the terms of the Scheme, and in accordance with the terms of the Deed Poll.
- (c) Subject to the Scheme becoming Effective, the transactions which form part of the Scheme will be implemented in accordance with the terms of the Scheme.

4.4 Election procedure

- (a) Ernie must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.
- (b) Subject to clauses 4.4(c), 4.4(d) and 4.4(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).
- (c) For an Election to be valid:
 - (i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme, and this clause 4.4; and
 - (ii) the Election Form must be received by the Share Registry at the address specified on the Election Form before the Election Time,unless the Bidder and Ernie agree otherwise, in their absolute discretion.
- (d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's

entire registered holding of Ernie Shares at the Scheme Record Date, regardless of whether the Relevant Shareholder's holding at the Scheme Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless the Bidder and Ernie agree otherwise, in their absolute discretion.

- (e) A Relevant Shareholder who makes a valid Election may vary, withdraw, or revoke that Election by lodging a replacement Election Form so that it is received by the Share Registry at the address specified on the Election Form before the Election Time. After the Election Time, a valid Election made by a Relevant Shareholder will be irrevocable unless the Bidder and Ernie agree, in their absolute discretion, to the revocation of the Election.
- (f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by the Bidder and Ernie in writing.

4.5 Determination of Scheme Consideration

- (a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by the Scheme Shareholder.
- (b) If a Scheme Shareholder is a Relevant Shareholder who has not made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration per Scheme Share in respect of 100% of the Scheme Shares held by that Relevant Shareholder on the Scheme Record Date.
- (c) If a Scheme Shareholder is a Relevant Shareholder who has made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for the Scheme Shares held by the Scheme Shareholder is
 - (i) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Scrip Consideration; *plus*
 - (ii) the Cash Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Cash Consideration.

4.6 HoldCo Securities

The Bidder undertakes in favour of Ernie (in its own right and on behalf of each Relevant Shareholder) that:

- (a) the HoldCo Securities issued as Scrip Consideration will, on their issue, rank equally in all respects with all other HoldCo Securities in the same class;
- (b) the HoldCo Securities issued as Scrip Consideration will be the same securities as are owned by the Bidder Affiliate that also holds securities in HoldCo, at the same per security price; and

- (c) on issue, each HoldCo Security will be fully paid and, to the extent within the control of the Bidder, free from any Encumbrance.

4.7 Fractional entitlements

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent or a fractional entitlement to a HoldCo Security, the fractional entitlement will:

- (a) in the case of a HoldCo Security, be rounded down to the nearest whole number of HoldCo Security; and
- (b) in the case of Cash Consideration, be rounded up to the nearest whole cent.

4.8 No amendment to Scheme without consent

Ernie must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder (or the consent of the Bidder's legal counsel if such a request is made at a Court hearing).

4.9 Deed Poll

The Bidder covenants in favour of Ernie (in Ernie's own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver, and to procure HoldCo to execute and deliver, the Deed Poll no later than the Business Day prior to the First Court Date and to perform the Deed Poll.

5 Implementation

5.1 Ernie's obligations

Ernie must, acting at all times in good faith, take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable (and consult with the Bidder on a regular basis about its progress in that regard), including without limitation taking each of the following steps:

- (a) **(Scheme Booklet):** prepare the Scheme Booklet in accordance with:
 - (i) all applicable laws and in particular with the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules; and
 - (ii) clause 5.4;
- (b) **(Independent Expert):**
 - (i) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto); and

- (ii) provide the Bidder with a copy of the final report received from the Independent Expert;
- (c) **(approval of draft for ASIC)**: procure that a meeting of the Board, or of a committee of the Board, is held to consider approving an advanced draft of the Scheme Booklet as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
- (d) **(liaison with ASIC)**: as soon as reasonably practicable after the date of this deed, and in accordance with the Timetable (and by no later than 14 days before the First Court Date):
- (i) provide an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 5.1(c), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and provide a copy of the same draft to the Bidder as soon as practicable thereafter; and
- (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters;
- (e) **(consult with the Bidder)** subject to clause 5.4, consult with the Bidder as to the content and presentation of the Scheme Booklet including:
- (i) providing the Bidder with drafts of the Scheme Booklet and the Independent Expert's Report (excluding the valuation section) for the purpose of enabling the Bidder to review and comment on those draft documents, provided that, in relation to the Independent Expert's Report, the Bidder's review is to be limited to a factual accuracy review;
- (ii) taking all comments made by the Bidder into account in good faith when producing a revised draft of the Scheme Booklet; and
- (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
- (iv) obtaining written consent from the Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (such consent not to be unreasonably withheld or delayed by the Bidder);
- (f) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Ernie Information;
- (g) **(ASIC and ASX review)**: keep the Bidder reasonably informed of any material matters raised by ASIC or the ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration, in relation to such matters, any issues or comments raised or made by the Bidder;
- (h) **(Board 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 Board, or of a committee of the Board, is held to consider approving the Scheme Booklet for despatch to the Ernie Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;

- (i) **(Recommendation)**: include in the Announcement and the Scheme Booklet (to the extent to which it is current as at the date of the Scheme Booklet) the statement with respect to the Recommendation as contemplated under clause 5.5, subject only to the qualifications specifically contemplated under clause 5.5;
- (j) **(section 411(17)(b) statements)** apply to ASIC for the production of:
 - (i) an indication of intent letter stating that ASIC does not intend to appear before the Court at the First Court Date; and
 - (ii) a statement in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (k) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that as soon as reasonably practicable after, and provided that, the approvals in clauses 5.1(g) and 5.1(h) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Ernie to convene the Scheme Meeting;
- (l) **(registration of explanatory statement)**: if the Court directs Ernie to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (m) **(despatch Scheme Booklet)**: as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Ernie Shareholders following the Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet;
- (n) **(convening Scheme Meeting)** comply with the orders of the Court pursuant to section 411(1) of the Corporations Act including, as required, despatching the Scheme Booklet to the Ernie Shareholders and convening and holding the Scheme Meeting;
- (o) **(Court approval)**: subject to all Conditions, other than the Condition in clause 3.1(b) ('Court approval'), being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme as agreed to by the Ernie Shareholders at the Scheme Meeting;
- (p) **(appeal process)** if the Court refuses to make any orders directing Ernie to convene the Scheme Meeting or approving the Scheme:
 - (i) Ernie and the Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) Ernie must appeal the Court's decision unless the parties agree otherwise or an independent senior counsel opines that, in their view, an appeal would have no reasonable prospect of success;
- (q) **(Certificate)**: at the hearing on the Second Court Date provide to the Court (with a copy to be provided to the Bidder) the certificate required to be provided by Ernie under clause 3.6. A draft of the certificate must be provided by Ernie to the Bidder by 5.00 pm on the date that is 2 Business Days prior to the Second Court Date;

- For personal use only
- (r) **(promote the Transaction)**: unless a majority of the IBC Directors change or withdraw their Recommendation as permitted under clause 5.5, participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction, including meeting with key Ernie Shareholders at the reasonable request of the Bidder and providing the Bidder with such information and assistance that the Bidder reasonably requests to enable it to promote the merits of the Transaction;
 - (s) **(implementation of Scheme)**: if the Scheme is approved by the Court:
 - (i) **(lodge copy of Court order)** subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act no later than by 5.00 pm on the first Business Day after the Court approves the Scheme;
 - (ii) **(Scheme consideration)** once the Scheme becomes Effective:
 - (A) apply to ASX to suspend trading in the Ernie Shares with effect from the close of trading on the Effective Date; and
 - (B) finalise and close the Share Register as at the Scheme Record Date and determine entitlements to the Scheme Consideration as at the Scheme Record Date in accordance with the Scheme and the Deed Poll;
 - (iii) **(transfer and registration)** once the Scheme becomes Effective, subject to the Bidder having provided the Scheme Consideration in accordance with the Scheme and Deed Poll, execute, on behalf of Scheme Shareholders, proper instruments of transfer of, and effect and register the transfer of, the Scheme Shares to the Bidder on the Implementation Date; and
 - (iv) **(further acts)** do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
 - (t) **(ASX listing)**: subject to clause 5.1(s)(ii), not do anything to cause the Ernie Shares to cease being quoted on the ASX prior to completion of the Transaction or to become permanently suspended from quotation prior to the Effective Date;
 - (u) **(Bidder Information)**: without the prior written consent of the Bidder, not use the Bidder Information for any purposes other than those expressly contemplated by this deed or the Scheme;
 - (v) **(Court documents)**: prepare and consult with the Bidder in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, reasonable comments from the Bidder on those documents (such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged);
 - (w) **(Bidder representation at Court hearing)**: allow, and not oppose, any application by the Bidder for leave of the Court to be represented by counsel at a hearing of the Court;

- (x) **(Registry information):** following satisfaction of the Condition in clauses 3.1(a) ('Shareholder approval'), provide all information, and procure that the Ernie Registry provides all information, in each case in a form reasonably requested by the Bidder, about the Scheme, the Scheme Shareholders, the Ernie Shareholders and the Share Register (including any sub register) to the Bidder and its Representatives which the Bidder reasonably requests in order to facilitate the provision by, or on behalf of, the Bidder of the Scheme Consideration and to understand the legal and beneficial ownership of Ernie Shares (including the results of directions by Ernie to Ernie Shareholders under Part 6C.2 of the Corporations Act), proxy appointments, directions received by Ernie prior to the Scheme Meeting and soliciting votes in favour of the Scheme; and
- (y) **(compliance with laws):** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.2 The Bidder's obligations

The Bidder must, acting at all times in good faith, take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable (and consult with Ernie on a regular basis about its material progress in that regard), including taking each of the following steps:

- (a) **(Bidder Information):** promptly prepare and provide to Ernie, in a form appropriate for inclusion in the Scheme Booklet, all information regarding the Bidder, the arrangements the Bidder has in place to fund and provide the Scheme Consideration, and the Bidder's intentions with respect to the assets, business and employees of Ernie if the Scheme is approved and implemented that is required by all applicable law, the Listing Rules and ASIC Regulatory Guides for inclusion in the Scheme Booklet, which information must (without limiting the above):
- (i) contain all information necessary to enable Ernie to ensure that the Scheme Booklet complies with the requirements of RG 60;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet; and
 - (iii) be updated by all such further or new material information which may arise after the Scheme Booklet has been despatched to Ernie Shareholders until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(review of Scheme Booklet):** as soon as reasonably practicable after delivery, review the drafts of the Scheme Booklet prepared by Ernie and:
- (i) provide comments on those drafts in good faith;
 - (ii) in respect of the Bidder Information only confirm to Ernie whether or not, so far as they are aware, the Scheme Booklet is misleading or deceptive in any material respect (including because of any material omission); and

(iii) in respect of the Bidder Information only provide to Ernie, as soon as possible, any material new information that they become aware of as may arise after the Scheme Booklet has been sent to Ernie Shareholders;

- (c) **(confirmation of Bidder Information)** as soon as reasonably practicable after Ernie requests that it does so, confirm in writing to Ernie that it consents to the inclusion of Bidder Information in the Scheme Booklet (and Ernie must not lodge the Scheme Booklet with ASIC until such approval is obtained from the Bidder), in the form and context in which the Bidder Information appears;
- (d) **(Regulatory notifications)** in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by the Bidder in relation to the Transaction;
- (e) **(Independent Expert's Report)**: promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report to be included in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);
- (f) **(representation)**: procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which through their respective counsel, the Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (g) **(Ernie Information)** without the prior written consent of Ernie, not use Ernie Information for any purposes other than those expressly contemplated by this deed or the Scheme;
- (h) **(Registry information)**: only use information provided to the Bidder pursuant to clause 5.1(x) for the purposes of the Transaction and as permitted by law;
- (i) **(Deed Poll)**: by not later than the Business Day prior to the First Court Date, enter into, and procure that HoldCo enters into, the Deed Poll in favour of the Scheme Shareholders to perform their obligations under the Scheme;
- (j) **(Share transfer)**: if the Scheme becomes Effective, the Bidder shall accept a transfer of the Scheme Shares as contemplated by clause 4.3(b)(i) and execute instruments of transfer in respect of the Scheme Shares;
- (k) **(Certificate)**: at the hearing on the Second Court Date provide to the Court (with a copy to be provided to Ernie) the certificate required to be provided by the Bidder under clause 3.6. A draft of the certificate must be provided by the Bidder to Ernie by 5.00 pm on the date that is 2 Business Days prior to the Second Court Date;
- (l) **(update Bidder Information)**: until the date of the Scheme Meeting, promptly provide to Ernie any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Bidder Information does not

contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement);

- (m) **(due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (n) **(promote the Transaction)**: participate in efforts reasonably requested by Ernie to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Ernie Shareholders at the reasonable request of Ernie and providing Ernie with such information and assistance that Ernie reasonably requests to enable it to promote the merits of the Transaction;
- (o) **(No denigration)** from the date of this deed until the Implementation Date, the Bidder must not, and must ensure that each other Bidder Group Member or Representative of the Bidder Group, does not, publicly (or otherwise to third parties) deliberately denigrate the Transaction or Ernie; and
- (p) **(compliance with laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.3 Conduct of Court proceedings

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

- (a) Ernie and the Bidder are entitled to separate representation at such Court proceedings;
- (b) this deed does not give Ernie or the Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent; and
- (c) Ernie and the Bidder must give all undertakings to the Court in such Court proceedings that are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed (provided that a party may appeal the Court's decision if it considers that the undertaking is not reasonable or usual in the circumstances).

5.4 Scheme Booklet – preparation principles and continued obligations

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
 - (i) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
 - (ii) Ernie is responsible for the Ernie Information contained in the Scheme Booklet; and
 - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Ernie, the Bidder, or their respective Representatives assume any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (b) Ernie must make available to the Bidder drafts of the Scheme Booklet (excluding any draft of the valuation section of the Independent Expert's Report), consult with the Bidder in relation to the content of those drafts (other than the Bidder

Information), and consider in good faith, for the purpose of amending those drafts, comments from the Bidder on those drafts. The Bidder acknowledges and agrees that Ernie has ultimate discretion with respect to the preparation, form, and content of the Scheme Booklet, other than as expressly provided in this deed or with respect to the Bidder Information.

- (c) Ernie must seek approval from the Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet, which approval the Bidder must not unreasonably withhold or delay, and Ernie must not register the Scheme Booklet with ASIC until such approval is obtained from the Bidder. Subject to this clause, the Bidder:
 - (i) must consult with Ernie as to the content of the Bidder Information;
 - (ii) consents to the inclusion of the Bidder Information in the Scheme Booklet; and
 - (iii) acknowledges that it is responsible for ensuring that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) and that Ernie will not verify or edit that information in the Scheme Booklet.
- (d) If Ernie and the Bidder disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after 5 Business Days after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Bidder Information or the Independent Expert's Report, the Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
 - (ii) if the disagreement relates to the form or content of the Bidder Information, Ernie will make such amendments to the form or content of the disputed part of the Bidder Information as the Bidder reasonably requires.
- (e) Ernie must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Ernie Shareholders.
- (f) The Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Ernie Shareholders.
- (g) Ernie must disclose to the Bidder and promptly update the Scheme Booklet with all such further or new information of which Ernie becomes aware that arises after the Scheme Booklet has been despatched to Ernie Shareholders until the date of the Scheme Meeting:
 - (i) as may be necessary to ensure that the Ernie Information contained in the Scheme Booklet does not contain any statement that, having regard to applicable disclosure requirements, is false, misleading, or deceptive in any material respect (including because of any material omission); or

- (ii) that is required to be disclosed to Ernie Shareholders under all applicable laws, and in particular by the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules, but was not included in the Scheme Booklet,

and in each case, Ernie must promptly consult with the Bidder as to the content and presentation of the updated Scheme Booklet, and the market announcement, in the manner contemplated by clause 5.1(e). Such consultation with the Bidder includes providing the Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of the Bidder. To the extent that the 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).

- (h) The Bidder must disclose to Ernie, and promptly update the Scheme Booklet with all such further or new Bidder Information of which the Bidder becomes aware that arises after the Scheme Booklet has been despatched to Ernie Shareholders until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet does not contain any statement that, having regard to applicable disclosure requirements, is false, misleading or deceptive in any material respect (including because of any material omission).
- (i) The parties each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of Ernie Shareholders and the 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 5.4 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

5.5 IBC Recommendation

- (a) Subject to clause 5.5(c), Ernie represents and warrants to the Bidder that each IBC Director has confirmed (by way of unanimous resolution of the IBC) that their recommendation in respect of the Scheme is that Ernie Shareholders vote in favour of the Scheme at the Scheme Meeting (**Recommendation**) and that they intend to vote, or cause to be voted, all Ernie Shares that they hold or control in favour of the Scheme (**Voting Intention**), the Recommendation and Voting Intention qualified only by words to the effect of 'in the absence of a Superior Proposal' and 'subject to the Independent Expert concluding, and continuing to conclude, in the Independent Expert's Report that the Scheme is in the best interests of Ernie Shareholders'.
- (b) Ernie must use its best endeavours to procure that, subject to clause 5.5(c), the IBC Directors unanimously recommend that the Ernie Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Scheme is in the best interests of the Ernie Shareholders and that the Scheme Booklet include a statement by the IBC to that effect.
- (c) Ernie must use its best endeavours to procure that the IBC collectively, and that the IBC Directors individually, do not adversely change, withdraw, adversely

modify or adversely qualify (including by making any public statement support, endorsing or recommending a Competing Proposal and / or to the effect that they no longer support the Scheme), its or their Recommendation or Voting Intention, unless (and the Bidder agrees that each IBC Director may, subject to the terms of this deed, publicly (or otherwise) withdraw, change or in any way qualify their Recommendation if):

- (i) a Superior Proposal is made;
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interest of the Ernie Shareholders;
 - (iii) if a Court, ASIC, or the Takeovers Panel requires that the relevant IBC Director to change, withdraw, qualify or modify, or abstain from making, their Recommendation or Voting Intention (as applicable); or
 - (iv) that IBC Director has determined, after receiving written legal advice from independent senior counsel, that the IBC Director, by virtue of their relevant directors' duties, is required to change, withdraw, qualify or modify, or abstain from making their Recommendation or Voting Intention (as applicable); or
 - (v) the IBC Director reasonably considers, after first obtaining written advice from independent senior counsel, that they should not continue to maintain their Recommendation or Voting Intention (as applicable) because that IBC Director has an interest in the Scheme that is so materially different from other Ernie Shareholders which would properly preclude or render it inappropriate for them to provide any such recommendation (**Scheme Interest**), and the Court would be unlikely to grant an order under section 411(1) of the Corporations Act directing Ernie to convene the Scheme Meeting or under section 411(4)(b) and 411(6) of the Corporations Act approving the Scheme, in each case solely as a result of the Scheme Interest.
- (d) Subject to an IBC Director withdrawing or changing the Recommendation or Voting Intention following the occurrence of one of the events referred to in clause 5.5(c), Ernie must ensure that the Announcement and the Scheme Booklet (to the extent to which it is current as at the date of the Scheme Booklet) state the Recommendation and Voting Intention, and such recommendation must not be qualified in any way other than by words to the effect of '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 interest of Ernie Shareholders'.

5.6 Notification

Subject to the Listing Rules and all applicable laws and regulations, if any fact, matter, or circumstance arises (including receipt or the expected receipt of an unfavourable report) from the Independent Expert's Report (including any supplementary or replacement report) that may lead to an IBC Director changing, withdrawing, or modifying their Recommendation or Voting Intention, Ernie must immediately notify the Bidder of this fact.

5.7 Further assurances

Ernie must ensure that each Recommendation and Voting Intention that has not been changed, withdrawn, or modified, is included in each ASX announcement made by Ernie referencing the Scheme from the date of this deed until the date of the Scheme Meeting.

5.8 Scrip Consideration

Notwithstanding anything else in this clause 5 or elsewhere in this deed, the parties acknowledge and agree that:

- (a) each IBC Director may, in their sole and absolute discretion:
 - (i) make the Recommendation only in respect of the Cash Consideration and make no recommendation in respect of the Scrip Consideration (as it applies to the Relevant Shareholders); and
 - (ii) make no recommendation at all in relation to whether the Relevant Shareholders should make an Election to receive the Scrip Consideration under the Scheme; and
- (b) no IBC Director will have failed to comply with this clause 5 (or any other provision of this deed) where they do anything contemplated by clause 5.8(a) above.

5.9 Timetable

- (a) Subject to clause 5.9(b), the parties must each use all reasonable endeavours to take all necessary steps and exercise all rights necessary to comply with their respective obligations under this clause 5 and take all necessary steps and exercise all rights necessary to implement the Scheme in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.9(a) to the extent that such failure is due to circumstances and matters outside the party's reasonable control (including, for the avoidance of doubt, any delays caused by a Government Agency) or constitutes a reasonable response by that party to circumstances or matters outside that party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control (including, for the avoidance of doubt, any delays caused by a Government Agency), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.
- (e) The parties acknowledge and agree that:
 - (i) unless the Bidder agrees otherwise, the Scheme Booklet will be dispatched to Ernie Shareholders prior to satisfaction (or waiver, if applicable) of the Condition set out in clauses 3.1(g); and

- (ii) unless Ernie agrees otherwise, the date of the Scheme Meeting shall be on or after the date that the Condition set out in clauses 3.1(g) are satisfied or waived (if applicable) (and the Bidder agrees that if required it will consent to adjourn the Scheme Meeting to give effect to this clause).

5.10 Ernie Equity Incentives

- (a) The Bidder acknowledges and agrees that, conditional on the Scheme becoming Effective, Ernie may take such action as is necessary to ensure that, prior to the Scheme Record Date, all Ernie Equity Incentives will vest in accordance with their terms and be exercised (if applicable), have any applicable restrictions removed (if applicable) and/or be cash settled, which actions may include:
- (i) the Board accelerating the vesting of, or waiving any vesting conditions or vesting periods applying to, any or all Ernie Equity Incentives (subject to the proper exercise of the Board discretion);
 - (ii) Ernie making all necessary applications to the ASX for waivers under the Listing Rules (if required);
 - (iii) Ernie issuing or procuring the issue or transfer of such number of Ernie Shares as required to satisfy the exercise of the Ernie Equity Incentives in accordance with their terms before the Scheme Record Date so that the holders of Ernie Equity Incentives can participate as Scheme Shareholders in the Scheme and receive the Scheme Consideration; or
 - (iv) Ernie arranging for the cash settlement of applicable Ernie Equity Incentives.
- (b) Ernie must notify the Bidder of the number of Ernie Shares that have or will be issued in accordance with clause 5.10(a) (if any), by no later than two Business Day before the Effective Date.
- (c) For the avoidance of doubt, the parties agree that the exercise of any discretion by the Board, or any other action, which is in accordance with this clause 5.10 will not be a Material Adverse Change or an Ernie Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed.

6 Conduct of business before the Implementation Date

6.1 Conduct of Ernie business

Subject to clause 6.2, from the date of this deed up to and including the Implementation Date, Ernie must:

- (a) keep the Bidder reasonably informed of any material developments concerning the conduct of its business;
- (b) provide a copy to the Bidder, as soon as practicable after they are available, of:

- (i) monthly management accounts in the same form as have been Fairly Disclosed; and
- (ii) all board papers of the Board, provided that Ernie may redact any part of the relevant board papers that contain or constitute competitively sensitive or privileged information relating to the existing business or affairs of Ernie, or information relating to the Ernie's Directors' consideration of this deed, the Scheme or the Transaction;
- (c) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all senior employees;
- (d) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (e) ensure that each Ernie Group Member:
 - (i) **(business)**: carries on its business in the ordinary and usual course and consistent with both the manner in which it has been conducted in the 12-month period prior to the date of this deed;
 - (ii) **(budget)** conducts its business materially in accordance with the FY23 Budget;
 - (iii) **(contracts and laws)**: must comply in all material respects with:
 - (A) all Material Agreements to which an Ernie Group Member is a party; and
 - (B) all applicable laws, authorisations and licences; and
 - (iv) **(insurance)**: must maintain (and, where necessary, use reasonable efforts to renew) such policies of insurance as are appropriate to the Ernie Group's operations, property and assets and to insure any material risk of the Ernie Group that are in force as at the date of this deed, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses and assets, and promptly notify the Bidder if any renewal proposal is not accepted by the relevant insurer; and
- (f) ensure that no Ernie Group Member:
 - (i) **(asset acquisitions or disposals)**:
 - (A) enters into any transaction or series of related transactions or undertakings (whether at one time or over a period of time) involving the acquisition, disposal, leasing or licensing of any tangible or non-tangible assets, property, entity with a value of \$2.5 million or more in aggregate; or
 - (B) disposes of the whole, or a substantial part, of its business or property, whether by any single transaction or series of related or similar transactions;
 - (ii) **(material contracts)**: enters into any contract or commitment (or series of related contracts or commitments), or materially varies or terminates

any contract or commitment (or series of related contracts or commitments) in existence at the date of this deed (excluding any contract or commitment in respect of Financial Indebtedness):

- (A) requiring annual payments by the Ernie Group in excess of \$1.5 million; or
 - (B) that generates, or is expected to generate, in each case, \$1.5 million or more in gross annual revenue for the Ernie Group;
- (iii) (**borrowings**): enters into any new contract or commitment (or series of related contracts or commitments) of this deed, in respect of Financial Indebtedness (or otherwise incurring Financial Indebtedness) of \$2.5 million or more in aggregate or varies the terms and conditions of, or terminates, any contract or commitment (or series of related contracts or commitments) in respect of Financial Indebtedness;
- (iv) (**capital expenditure**): enters into any transaction or series of related transactions (whether at one time or over a period of time) involving capital expenditure with a value of \$2.5 million or more in aggregate or defer any capital expenditure, other than in relation to research and development expenditure, implementation capitalisation, sales commissions and leases;
- (v) (**accounting**) changes any accounting method, practice or principle used by it, other than as a result of changes in generally accepted accounting standards or generally accepted accounting principles;
- (vi) (**employees - individual**): enters into any new employment or service agreement (other than for the purposes of replacing an existing agreement or arrangement on a materially consistent basis), or materially varies or terminates any employment or service agreement in existence at the date of this deed with an individual in respect of which the total fixed remuneration is greater than \$300,000;
- (vii) (**employees – aggregate**): enters into or varies employment or service agreements, or incurs with respect to, or increases, the remuneration, compensation or benefits of any employee(s) or contractor(s), where the aggregate annualised cost of such agreements, variations or increases is greater than \$3,000,000;
- (viii) (**remuneration, compensation and benefits**):
- (A) materially increases the remuneration, compensation or benefits of, or pays any bonus or issues any securities to, or otherwise materially varies the employment arrangements with: (i) any of its directors, officers or other members of the executive leadership team or any direct reports of such person (**Relevant Employee**), or (ii) any employee, where the aggregate cost of such increases, bonuses or issues of securities, or variations is greater than \$300,000;
 - (B) accelerates the rights of its Relevant Employees to compensation or benefits of any kind (other than any vesting of Ernie Equity Incentives granted by Ernie before the date of this deed in accordance with its terms or under clause 5.10); or

- (C) pays or agrees to pay a Relevant Employee a termination payment (including a “golden parachute”),

other than:

- (D) in the ordinary and usual course of the Ernie Group’s business;
- (E) the payment of bonuses to Relevant Employees as provided for in the short term, deferred or long-term incentive plans, the employment terms, or any other contractual entitlement of that Relevant Employee in existence as at the date of this deed and Fairly Disclosed in the Disclosure Materials, provided that the aggregate of the bonuses paid to such individuals are no greater than \$200,000;
- (F) as provided for in Ernie’s redundancy policy as at the date of this deed or an employment or services agreement in existence as at the date of this deed as Fairly Disclosed in the Disclosure Materials; or
- (G) in connection with any action that is undertaken or that otherwise occurs in accordance with clause 5.10;
- (ix) (**Encumbrances**): creates an Encumbrance over any material asset or undertaking of an Ernie Group Member other than in the ordinary course of business of the Ernie Group;
- (x) (**dividends**): sets or changes its dividend policy or (ii) announces, declares, determines, makes or pays any dividend or any other distribution out of capital, profits or reserves;
- (xi) (**capital reduction**): buys-back, redeems, reduces or cancels any equity Securities or any of its share capital;
- (xii) (**related party transactions**): enters into, or resolves to enter into, a transaction with a related party of Ernie, including giving or agreeing to give a financial benefit to a related party (other than a related party that is an Ernie Group Member) as defined in section 228 of the Corporations Act;
- (xiii) (**capital reorganisation**): undertakes a Reorganisation Event;
- (xiv) (**vary rights**): varies or cancels any rights attaching to any Securities;
- (xv) (**waiver of debts**): waives any material right or a material debt owed to it where the financial impact of the waiver on the Ernie Group as a whole will, or is reasonably likely to be, in excess of \$500,000 (individually or in aggregate);
- (xvi) (**constitution**): amends its constitution, including by adopting a new constitution;
- (xvii) (**Subsidiaries**): acquires or disposes of any Subsidiary;
- (xviii) (**Ernie Prescribed Occurrence**) takes or fails to take any action that constitutes an Ernie Prescribed Occurrence;

- (xix) **(Tax elections)** makes any material Tax elections or changes any material Tax methodologies applied by it in the last 12 months prior to the date of this deed;
- (xx) **(legal proceedings)**: commences, compromises, settles, or admits to fault or liability in respect of, or offers to settle, any legal proceedings, claim, investigation, arbitration or other like proceeding (or series of related legal proceedings, claims, investigations, arbitrations or like proceedings), including any tax claims, investigations or disputes, where the aggregate amount claimed by or against an Ernie Group Member exceeds \$1.5 million, other than as a claimant in respect of the collection of trade debts owed to the Ernie Group arising in the ordinary course of the Ernie Group's business;
- (xxi) **(Hero Brands SHD)** without the written consent of the Bidder, take any action with respect to the Change of Control Requirements or related call options under the Hero Brands SHD; and
- (xxii) **(agree to do these things)** agrees or commits to doing any of the things referred to in clauses 6.1(f)(i) to 6.1(f)(xxi).

6.2 Permitted acts

- (a) The obligations of Ernie and each Ernie Group Member under clause 6.1 do not apply in respect of any matter, and nothing in clause 6.1 restricts Ernie or any Ernie Group Member from doing anything:
 - (i) which is permitted by this deed;
 - (ii) with the prior written consent of the Bidder (such approval not to be unreasonably withheld, delayed or qualified);
 - (iii) which is required to be done pursuant to this deed or to implement the Scheme;
 - (iv) which is required by law or an order of a court or Government Agency, including the Listing Rules;
 - (v) which was Fairly Disclosed by Ernie in an announcement made to the ASX or a document lodged with ASIC before the date of this deed;
 - (vi) which was Fairly Disclosed in the Disclosure Materials;
 - (vii) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, a disease epidemic or pandemic, including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof), any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightening, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide or other natural disaster or adverse weather conditions or the like);
 - (viii) which is necessary for Ernie or any Ernie Group Member to meet its legal or contractual obligations; or

- (ix) in connection with any action that is undertaken or that otherwise occurs in accordance with clause 5.10.
- (b) For the avoidance of doubt, nothing in this clause 6 restricts the ability of Ernie to respond to a Competing Proposal in accordance with clause 11.

6.3 Access, information and management

- (a) In the period from the date of this deed to and including the Implementation Date and for so long as a majority of the IBC considers the Transaction to be in the best interests of Ernie Shareholders and continues to publicly recommend that Ernie Shareholders vote in favour of the resolution to be proposed at the Scheme Meeting to approve the Scheme, Ernie must as soon as reasonably practicable following a request by the Bidder (acting reasonably), provide the Bidder (and its Representatives) with (or procure the provision of):
- (i) reasonable access to (or copies of) documents, records, information and premises relating to the business, operations and finances of the Ernie Group; and
 - (ii) reasonable access to executives and senior management of the Ernie Group;
 - (iii) all monthly financial reports and other reports provided to the Ernie Board (including, but not limited to, the monthly report of the chief financial officer of Ernie and monthly statement of profit and loss in respect of the Ernie Group);
 - (iv) regular reports on the financial affairs of the Ernie Group in the form that is ordinarily used by Ernie, including the Ernie Group's monthly management accounts to the Bidder in a timely manner; and
 - (v) a copy of all material correspondence received from, or provided or proposed to be provided to, a Government Agency,
- which the Bidder reasonably requires for the purposes of:
- (vi) applying for all relevant Regulatory Approvals;
 - (vii) implementing the Scheme;
 - (viii) the Bidder obtaining an understanding, or furthering its understanding, of the operation of the Ernie Group's business, financial position (including, but not limited to, its cash flow and working capital position), trading performance, management control systems (including information technology and data), prospects, assets, affairs, and operations;
 - (ix) preparing for carrying on the business of Ernie following implementation of the Scheme (including for developing and implementing plans for the transition of the business of the Ernie Group to the Bidder following implementation of the Scheme);
 - (x) keeping the Bidder informed of material developments relating to the Ernie Group;

- (xi) finalisation of the Bidder's structuring arrangements for the Transaction; and
- (xii) any other purpose agreed in writing between the parties (each acting reasonably).
- (b) Nothing in this clause 6.3 obliges Ernie to provide to the Bidder or its Representatives any information:
- (i) concerning Ernie's Directors' or management's consideration of the Scheme or the Transaction;
 - (ii) relating in any way to a Competing Proposal;
 - (iii) which would breach an obligation to any person (including an obligation of confidentiality) or any applicable privacy laws;
 - (iv) which would require an Ernie Group Member to take any action that would reasonably be expected to result in the Ernie Group breaching any applicable law or the entity's constituent documents; or
 - (v) which is confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Ernie Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege (provided that Ernie must use reasonable endeavours to facilitate the provision of such information without waiving legal professional privilege).
- (c) Ernie will provide reasonable assistance to the Bidder for the purpose of satisfying Ernie's obligations under this clause 6.3 but nothing in this clause 6.3 requires Ernie to provide access to its people or documentation or to take any other action which would significantly disrupt the usual and ordinary course of Ernie's businesses and operations.

6.4 Implementation Planning Committee

- (a) As soon as reasonably practicable after the date of this deed, the parties must establish an Implementation Planning Committee as set out in this clause 6.4.
- (b) Without limiting clause 6.3, between (and including) the date of this deed and the Implementation Date, the Implementation Planning Committee will act as a forum for consultation and planning by the parties to work together in good faith to:
- (i) implement the Transaction in accordance with this deed; and
 - (ii) ensure the smooth transition of the management of the business and affairs of the Ernie Group to the Bidder following the implementation of the Scheme, including to coordinate the matters set out in the clause 6.
- (c) The parties will use reasonable endeavours to procure that the Implementation Planning Committee meets fortnightly, commencing on the one-month anniversary of the date of this deed.

- (d) A representative nominated by the Bidder will act as the chair of meetings of the Implementation Planning Committee and the Bidder will establish an agenda for each meeting.
- (e) Subject to this deed, nothing in this clause 6.4 requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this deed constitutes the relationship of a partnership or joint venture between the parties.

6.5 Access to Bidder information

- (a) In the period from the date of this deed to and including the Implementation Date, the Bidder must:
- (i) respond to any reasonable request from Ernie and its Representatives (including in response to requests for information from any Government Agency) for information concerning the Bidder Group and its business and operations; and
 - (ii) provide Ernie and its Representatives reasonable access to executives and senior management, offices and other facilities, and books and records of members of the Bidder Group, and otherwise provide reasonable co-operation to Ernie and its Representatives, for the purpose of doing all things necessary or desirable under this deed or in connection with the Transaction (including compliance with any regulatory or financial market reporting requirements), and any plans for the integration of the Ernie Group into the Bidder Group following the Implementation Date.
- (b) Nothing in this clause 6.5 requires the Bidder to provide Ernie with any information:
- (i) which would breach an obligation to any person (including an obligation of confidentiality) or any applicable privacy laws;
 - (ii) which would require a Bidder Group Member to take any action that would reasonably be expected to result in the Bidder Group breaching any applicable law or the entity's constituent documents;
 - (iii) which is confidential, competitively sensitive, or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Bidder Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege (provided that the Bidder must use reasonable endeavours to facilitate the provision of such information without waiving legal professional privilege); or
 - (iv) concerning the consideration of the Transaction by the Bidder board.
- (c) The Bidder will provide reasonable assistance to Ernie for the purpose of satisfying its obligations under this clause 6.5 but nothing in this clause 6.5 requires the Bidder to provide access to its people or documentation or to take any other action would disrupt the usual and ordinary course of its businesses and operations.

6.6 Change of control

- (a) As soon as practicable after the date of this deed, Ernie must:
- (i) seek to identify any change of control or unilateral termination rights in any material contract (including any joint venture or lease, and which for the avoidance of doubt, includes the rights under the Hero Brands SHD) to which an Ernie Group Member is party that may be triggered by the implementation of the Transaction (**Change of Control Requirements**); and
 - (ii) use all reasonable endeavours to agree a proposed strategy to reduce any costs required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents in accordance with the agreed strategy.
- (b) A failure to obtain any counterparty consent (other than as a result of a breach of clause 6.1(f)(xxi) or this clause 6.6) will not constitute a breach of this deed by Ernie, and together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.
- (c) The Bidder must cooperate with, and provide all reasonable assistance to, Ernie to obtain such consents or confirmations in relation to any identified Change of Control Requirements, including by promptly providing any information reasonably required by counterparties, provided that nothing in this clause 6.6(c) requires the Bidder to:
- (i) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of the counterparty, other than as provided in the relevant material contract; or
 - (ii) agree to any material changes to the terms of the material contract, in each case to obtain such consent or waiver.
- (d) Provided that Ernie has complied with this clause 6.6, a failure by an Ernie Group Member to obtain any Third Party consent or waiver in respect of a Change of Control Requirement (other than as a result of a breach of clause 6.1(f)(xxi) or this clause 6.6) will not, by itself, constitute a breach of this deed by Ernie and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.
- (e) This clause 6.6 will not apply in relation to Ernie's Existing Financing Arrangements or its arrangements or agreements in relation to its Financial Indebtedness.

6.7 Existing Financing Arrangements

- (a) Ernie must cooperate with, and undertake all steps reasonably requested by the Bidder in connection with any repayment of the Ernie Group's Financial Indebtedness, or otherwise developing a financing strategy for the Ernie Group's business, that Ernie reasonably requires in connection with the Transaction, including:
- (i) liaising with its creditors to obtain information on any of the Ernie Group's Financial Indebtedness or security interests granted by any of them;

- (ii) providing the Bidder with information reasonably requested by the Bidder in relation to use of existing cash reserves of the Ernie Group for such purpose;
- (iii) issuing repayment notices in relation to the Existing Financing Arrangements; and
- (iv) using reasonable endeavours to procure discharge of registrations on the PPSR from secured parties in relation to any security interests granted by an Ernie Group Member in favour of that party,

subject always to Ernie not being required to actually effect such repayment until the Implementation Date.

- (b) Without limiting clause 6.7(a), Ernie must provide reasonable assistance requested by the Bidder in connection with the orderly transition of any existing bank guarantee, letter of credit, performance bond or similar instrument issued to any person at the request or direction of any Ernie Group Member (**Instrument**) including:
 - (i) providing details of existing Instruments to the Bidder; and
 - (ii) communicating with and providing information to the issuers of the Instruments to facilitate the replacement, cash backing or other arrangement for the transition of those Instruments in connection with the Transaction.
- (c) The Bidder must promptly reimburse Ernie for all reasonable costs incurred by Ernie in connection with any cooperation under this clause 6.7.
- (d) Between the date of this deed and the Implementation Date, Ernie must promptly notify the Bidder if:
 - (i) it or any Ernie Group Member requests or grants a waiver or consent in respect of a material provision of Existing Financing Arrangements, with reasonably detail of the reason for the request;
 - (ii) it or any Ernie Group Member becomes aware of a breach of Existing Financing Arrangements or the occurrence of a Financing Default, together with reasonable information in relation to the Financing Default, event or circumstance giving rise to the breach or Financing Default; or
 - (iii) it or any Ernie Group Member enters into, unwinds, or closes out any Financial Indebtedness in connection with derivative or similar transactions, including to manage exposure to fluctuations in the rate or price of currency or interest rates.
- (e) Ernie must:
 - (i) consult in good faith with the Bidder after the date on which a notice is given under clause 6.7(d) to consider and determine the steps that can be taken to avoid, remedy or cure (as the case may be) the relevant Financing Default, and
 - (ii) use its best endeavours to avoid the occurrence of, or remedy or cure, any Financing Default, except in relation to any Financing Default that arises directly and solely by implementation of the Transaction.

- (f) Ernie must notify the Bidder, no later than 10 Business Days prior to the Implementation Date, of the aggregate amount of cash and cash equivalents (as such terms are defined in the Australian Accounting Standards), and the Financial Indebtedness, of the Ernie Group and, as soon as possible thereafter, Ernie and the Bidder must consult and negotiate in good faith to agree and implement steps for the Ernie Group to apply as much of its cash and cash equivalents as possible (except to the extent required for reasonable working capital requirements) to repay, extinguish, release or otherwise reduce the level of Financial Indebtedness of the Ernie Group prior to the Implementation Date.

6.8 Cooperation with financing

- (a) Ernie agrees to provide reasonable assistance in connection with the arrangement and / or syndication of any debt financings by any Ernie Group Member (**Transaction Financing**) as may be reasonably requested by the Bidder in writing, including using reasonable endeavours to:
- (i) the extent not provided in the Disclosure Materials, promptly provide any reasonably, pertinent or customary information regarding the Ernie Group as reasonably requested by the Bidder;
 - (ii) the extent not provided in the Disclosure Materials, provide any documentation and other information with respect to the Ernie Group required by the financiers or bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, as required to satisfy the conditions of the Transaction Financing;
 - (iii) make appropriate officers and employees available at mutually convenient times for participation in a reasonable number of meetings, due diligence sessions, presentations and sessions with ratings agencies and prospective financing sources;
 - (iv) the extent not provided in the Disclosure Materials, promptly provide the Bidder and its financing sources (including providing any reasonably requested consent under the Confidentiality Deed to such disclosure to the Bidder’s proposed financing sources) with such financial and operating data and other information with respect to the Ernie Group as is reasonably requested by the Bidder or the financiers in relation to the Transaction Financing;
 - (v) cooperate and assist with the review of the offering document to be used in obtaining or syndicating the Transaction Financing;
 - (vi) cooperate with marketing efforts of the Bidder and its financing sources for all or any portion of the Transaction Financing (including by making available such senior executives of Ernie as reasonably requested by the Bidder for conference calls, management presentation sessions, roadshows and similar meetings or presentations); and
 - (vii) providing reasonable assistance to the Bidder Group to satisfy any conditions and obligations of any financing to the extent it is within its reasonable control,

provided that no Ernie Group Member will be required to incur any liability in connection with any Transaction Financing (other than remuneration of its

employees) prior to implementation of the Scheme that is not reimbursable by the Bidder.

- (b) Nothing in clause 6.8 will require any Ernie Group Member to provide cooperation with financing to the extent that it would:
- (i) unreasonably interfere with the ongoing business or operations of Ernie (having regard to, among other things, the reasonableness of the notice given to Ernie of any requested assistance or cooperation);
 - (ii) cause any of the Conditions to not be satisfied or otherwise cause a breach of this deed;
 - (iii) require an Ernie Group Member to take any action that would reasonably be expected to conflict with or violate that Ernie Group Member's constituent documents or any law, or that would breach an obligation to any person (including any confidentiality obligations);
 - (iv) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Ernie Group taken as a whole, or would be reasonably likely to jeopardise any legal privilege; or
 - (v) require the approval of shareholders of Ernie under section 260B of the Corporations Act or equivalent or analogous restriction in any jurisdiction.
- (c) The Bidder must promptly reimburse Ernie for all reasonable and documented out-of-pocket costs incurred by the Ernie Group in connection with any cooperation provided under this clause 6.8 (including reasonable and documented out-of-pocket advisors' fees and expenses), other than remuneration of its employees.

6.9 Appointment of directors

Ernie must, as soon as practicable:

- (a) after the Implementation Date, and subject to receipt by Ernie of signed consents to act, take all actions necessary to cause the appointment of the persons nominated by the Bidder at least 10 Business Days prior to the Effective Date as new Ernie Directors and new directors of each Ernie Group Member; and
- (b) after the Scheme has been implemented, ensure that all directors on the Board, other than the Bidder's nominees appointed pursuant to clause 6.9(a), resign by delivering to Ernie written notices of resignation.

7 Representations and warranties

7.1 Bidder representations

The Bidder represents and warrants to Ernie (in its own right and separately as trustee or nominee for each of the other Ernie Indemnified Parties) that each of the Bidder Representations and Warranties are true and correct in all material respects.

7.2 Bidder indemnity

The Bidder agrees with Ernie (in its own right and separately as trustee or nominee for each of the other Ernie Indemnified Parties) to indemnify and keep indemnified Ernie and the Ernie Indemnified Parties from and against all Claims, liabilities, damages, Loss, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Ernie or any of the other Ernie Indemnified Parties suffers, incurs or is liable for arising out of any Bidder Representation and Warranty being untrue or incorrect in any material respect.

7.3 Ernie's representations

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

7.4 Ernie's indemnity

Ernie agrees with the Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify and keep indemnified the Bidder and each of the other Bidder Indemnified Parties from and against all Claims, liabilities, damages, Loss, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which the Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any Ernie Representation and Warranty being untrue or incorrect in any material respect.

7.5 Qualifications on Ernie warranties

The Ernie Representations and Warranties under clause 7.3 and indemnity under clause 7.4, are given subject to any matter:

- (a) which is permitted in this deed;
- (b) which is required to be done pursuant to this deed or to implement the Scheme;
- (c) which took place with the prior written consent of the Bidder;
- (d) which was Fairly Disclosed by Ernie in an announcement made to the ASX or a document lodged with ASIC or available from the registers maintained by ASIC, the High Court and the Federal Courts of Australia, the Supreme Courts of each State in Australia and the PPSR before the date of this deed;
- (e) which was Fairly Disclosed in the Disclosure Materials; or
- (f) within the actual knowledge of the Bidder Deal Team, as at the date of this deed.

7.6 Survival of representations

Each representation and warranty in clauses 7.1 and 7.3:

- (a) is severable; and
- (b) will survive the termination of this deed.

7.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 7.2 and 7.4):

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

7.8 Timing of warranties

Each representation and warranty made or given under clauses 7.1 or 7.3 is given:

- (a) at the date of this deed and repeated each day until (and including) the Second Court Date; or
- (b) where expressed to be given only as at a particular time, at that time.

7.9 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 7. A notice provided by a party under this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of any of the representations or warranties given under this clause 7.

8 Releases

8.1 Ernie Indemnified Parties

- (a) Subject to clause 8.1(b), the Bidder releases, and shall procure that each Bidder Group Member releases and discharges, its rights, and agrees with Ernie that it will not make a claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy, that either the Bidder or any other Bidder Group Member has or may have against any person who is an Ernie Indemnified Party (except for an Ernie Group Member) in connection with or in respect of:
 - (i) Ernie's execution or delivery of this deed;
 - (ii) any breach of any representations and warranties of Ernie or any other Ernie Group Member in this deed;
 - (iii) the implementation of the Scheme;
 - (iv) any disclosure made by an Ernie Indemnified Party including in the Disclosure Materials that contains any statement which is false or misleading whether in content or by omission;

- (v) any failure to provide information; or
- (vi) the Board's and the IBC's consideration and conduct of the Transaction,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where an Ernie Indemnified Party has engaged in fraud, wilful misconduct or wilful concealment. For the avoidance of doubt, nothing in this clause 8.1(a) limits the Bidder's rights to terminate this deed under clause 13.1 or its rights under clause 12.

- (b) Clause 8.1(a) is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Ernie receives and holds the benefit of this clause 8.1 to the extent it relates to each person who is an Ernie Indemnified Party (including, for the avoidance of doubt, each member of the Board) as trustee for each of them.

8.2 Bidder Indemnified Parties

- (a) Ernie releases, and shall procure that each Ernie Group Member releases and discharges, its rights, and agrees with the Bidder that it will not make a claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy, that either Ernie or any other Ernie Group Member has or may have against any person who is a Bidder Indemnified Party (except for a Bidder Group Member) in connection with or in respect of:

- (i) the Bidder's execution or delivery of this deed;
- (ii) any breach of any representations and warranties of the Bidder in this deed;
- (iii) the implementation of the Scheme;
- (iv) any disclosure containing any statement which is false or misleading whether in content or by omission; or
- (v) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where a Bidder Indemnified Party has engaged in fraud, wilful misconduct or wilful concealment. For the avoidance of doubt, nothing in this clause 8.2(a) limits Ernie's rights to terminate this deed under clause 13.1 or its rights under clause 12.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. The Bidder receives and holds the benefit of this clause to the extent it relates to each other person who is a Bidder Indemnified Party as trustee for each of them.

8.3 Deeds of indemnity

- (a) Subject to the Scheme becoming Effective, the Bidder undertakes in favour of Ernie and each other Ernie Indemnified Party that it will:
 - (i) for a period of not less than 7 years from the Implementation Date, ensure that the constitution of each Ernie Group Member continues to

contain such rules as are contained in those constitutions at the date of this deed which provide to the extent permitted by law for each Ernie Group Member to indemnify each of its directors and officers against any liability incurred by that director or officer in their capacity as a director or officer of the Ernie Group Member to any person other than an Ernie Group Member; and

- (ii) procure to the extent permitted by law that each Ernie Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) Ernie receives and holds the benefit of clause 8.3(a), to the extent it relates to the other Ernie Indemnified Parties, as trustee for them.

8.4 Directors' and officers' insurance

- (a) The Bidder agrees that Ernie will in respect of Ernie and all other Ernie Group Members:
 - (i) prior to the Effective Date, if required by Ernie, arrange for the cover currently provided under the directors' and officers' insurance policy for Ernie and all other Ernie Group Members (**Policy**) to be extended for a further period of 12 months; and
 - (ii) by no later than the Implementation Date, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy (**D&O Run-off Policy**), and pay all premiums required so as to ensure that insurance cover is provided under the D&O Run-off Policy on those terms until that date, provided that:
 - (A) Ernie must use all reasonable endeavours to obtain the most attractive commercial terms for the D&O Run-off Policy from a reputable insurer;
 - (B) Ernie keeps the Bidder informed of progress in relation to the D&O Run-off Policy and consults reasonably and in good faith with the Bidder in relation to the applicable D&O Run-off Policy prior to securing the relevant policy;
 - (C) Ernie consults with the Bidder in advance in relation to the progress of obtaining, and all material communications with potential providers regarding, the D&O Run-off Policy;
 - (D) the scope and amount of the cover of the D&O Run-off Policy is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in place for the directors and officers of Ernie as at the date of this deed (it being acknowledged that the market for cover is dynamic and reasonable regard is to be had to the extent to which the level and type of cover in place under the existing policies is available for the extended run-off);
 - (E) Ernie will be entitled to obtain the D&O Run-off Policy on the terms set out in clause 8.4(a)(ii)(D), and will use its reasonable

endeavours to obtain the D&O Run-off Policy at a total cost that does not exceed \$500,000;

- (F) if requested in writing by the Bidder (and provided there is a reasonable period to obtain an alternative quote and place and enter into the D&O Run-off Policy before the date of the Scheme Meeting), Ernie will, before placing or entering into the Proposed D&O Run-off Policy (as defined below) obtain a quote from reputable insurers nominated in writing by the Bidder (**Alternative Insurers**) for a D&O Run-off Policy sourced in accordance with (and which would comply with) clauses 8.4(a)(ii)(A) to 8.4(a)(ii)(D) (**Alternative D&O Run-off Policy**), which is on the same terms, or terms that are the same in all material respects, as the D&O Run-off Policy that is proposed to be entered into by Ernie (**Proposed D&O Run-off Policy**) (that was sourced in accordance with, and which would comply with, clauses 8.4(a)(ii)(A) to 8.4(a)(ii)(D)) and if:

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

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

- (b) From the Implementation Date, the Bidder must procure that Ernie does not, and Ernie must not:
- (i) vary or cancel the Policy or the relevant D&O Run-off Policy; or
 - (ii) unless required under the Policy or the relevant D&O Run-off Policy, commit any act or omission that may prejudice any claim by a director or officer of Ernie under the D&O Run-off Policy.

8.5 Operation of this clause

The Bidder and Ernie agree that, in addition to the force that this clause 8 has by virtue of this deed, clauses 8.1, 8.2, 8.3, 8.4 and this clause 8.5 also operate as a deed poll.

9 Public announcement

9.1 Announcement of transaction

Immediately after the execution of this deed, Ernie must issue the Announcement.

9.2 Further public announcements

Subject to clause 9.3, any further public announcements by Ernie or the Bidder in relation to, or in connection with, the Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by Ernie and the Bidder in writing (acting reasonably) subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Transaction or any other transaction the subject of this deed or the Scheme, or in circumstances where the public announcement relates to a Competing Proposal. Where this clause 9.2 applies to an announcement, a party must provide the other party with a draft copy as soon as reasonably practicable before it is proposed that such proposed announcement be made and must give the other party a reasonable opportunity to comment on the form and content of the draft proposed announcement and must take into account all reasonable comments from that party on the draft.

9.3 Required announcement

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practicable. For the avoidance of doubt, this clause 9.3 does not apply in relation to Ernie making any announcement or disclosure in connection with a Competing Proposal.

10 Confidentiality

10.1 Confidentiality Deed

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

10.2 Survival of obligations

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

11 Exclusivity arrangements

11.1 Termination of existing discussions

Ernie represents and warrants to the Bidder that, as at the date of this deed:

- (a) no Ernie Group Member nor any Representative of an Ernie Group Member is a party to any agreement or arrangement with a third party entered into for the purpose of facilitating a Competing Proposal; and
- (b) each Ernie Group Member and each Representative of an Ernie Group Member (to the extent authorised or acting on its behalf), has ceased:
 - (i) any existing discussions or negotiations with any third party in relation to a potential Competing Proposal; and
 - (ii) the provision of any non-public information in relation to the Ernie Group to any third party, where the provision of non-public information was for the purposes of, a potential Competing Proposal and has enforced all rights it has to call for the return and / or destruction of any non-public information previously provided to any such third party.

11.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of the Bidder, Ernie must not (and must ensure that its Relevant Persons acting on its behalf) do not directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any inquiries, indications or expressions of interest, proposals, offers, discussions or negotiations with any third party in connection with, with a view to obtaining, in relation to, or that may be reasonably expected to encourage or lead to, a Competing Proposal, or communicate any intention to do any of these things.

11.3 No due diligence and no talk restrictions

Subject to clause 11.5, during the Exclusivity Period, Ernie must not, and must ensure that each of its Relevant Persons acting on its behalf do not, except with the prior written consent of the Bidder, directly or indirectly:

- (a) solicit, initiate, facilitate, encourage or invite any person other than a Third Party to undertake due diligence investigations in respect of the Ernie Group or its businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed, or potential Competing Proposal;
- (b) enter into, participate in, or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person that would reasonably be expected to lead to the making of, an actual, proposed or potential Competing Proposal;
- (c) negotiate, accept, or enter into any agreement, arrangement or understanding regarding, or which would reasonably be expected to lead to the making of, an actual, proposed, or potential Competing Proposal;
- (d) furnish or otherwise make available any non-public information about the business, assets or affairs of the Ernie Group or provide access to any Ernie officers or employees to any Third Party in relation to or connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the receipt, formulation, development, finalisation or announcement of, an actual, proposed, or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the Ernie Group); or

- (e) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 11.3,

even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated, or initiated by Ernie, any other Ernie Group Member, or a Relevant Person of an Ernie Group Member or the relevant person has publicly announced the Competing Proposal.

11.4 Notification of approaches

- (a) During the Exclusivity Period, Ernie must as soon as reasonably practicable (and in any event within 24 hours) notify the Bidder in writing if it, or any of its Representatives, become aware of any:
- (i) receipt of, negotiations, discussions or other communications, or approach or inquiry, in relation to or which could reasonably be expected to lead to, a Competing Proposal;
 - (ii) approach or proposal made to Ernie or any of its Representatives, in connection with, in respect of any exploration or completion of, or which could reasonably be expected to lead to, a Competing Proposal; or
 - (iii) request made by a Third Party for, or provision by Ernie or any of its Representatives of, any material non-public information concerning the business or operations of Ernie or the Ernie Group by or to any Third Party (other than a Government Agency) in connection with a Competing Proposal or such Third Party formulating, developing, finalising, or assisting in the formation, development, or finalisation of a Competing Proposal,

in each case, whether direct or indirect, solicited, or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the actions described in clauses 11.4(a)(i) to 11.4(a)(iii) may only be taken by Ernie or its Representatives if permitted by clause 11.5.

- (b) A notification given under clause 11.4(a) must include all material terms and conditions of the Competing Proposal, including as to value and price, and details of the identity of the proposed bidder or acquirer, form of consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent, to the extent known by Ernie or its Representatives.
- (c) If a Competing Proposal is put to Ernie during the Exclusivity Period and clause 11.5(a) or clause 11.5(b) applies, then Ernie must as soon as reasonably practicable notify the Bidder of that fact.

11.5 Exceptions

Clause 11.3 do not prohibit any action or inaction by Ernie, any Ernie Group Member or any of their Representatives in relation to a bona fide actual, proposed or potential Competing Proposal if the IBC, acting in good faith, has determined after:

- (a) having obtained written advice from Ernie's reputable external financial and legal advisers, that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and

- (b) receiving written advice from Ernie's reputable external Australian legal advisers practising in the area of corporate law, that compliance with clause 11.3 would, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties owed by any Ernie Director,

provided that the actual, proposed or potential Competing Proposal was not brought about by, or facilitated by, a breach of clause 11.2.

11.6 Matching right

- (a) Without limiting clause 11.2, during the Exclusivity Period, Ernie must, and must procure that each of the Ernie Group Members:
- (i) do not enter into any legally binding agreement, arrangement or understanding pursuant to which it agrees to undertake or implement or otherwise give effect to an actual, proposed, or potential Competing Proposal with a Third Party; and
 - (ii) use its best endeavours to procure that none of the IBC Directors withdraws, adversely changes, adversely modifies, or adversely qualifies his or her Recommendation or Voting Intention in favour of the Scheme, publicly recommend or support any actual, proposed or potential Competing Proposal,
- unless,
- (iii) the IBC acting in good faith and in order to satisfy what the IBC Directors consider to be their statutory or fiduciary duties determines that the Competing Proposal would be, or would be likely to be, a Superior Proposal;
 - (iv) Ernie has provided the Bidder with a notice stating that it is given for the purposes of this clause 11.6 and specifying the material terms and conditions of the Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal, form of consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent (in each case, to the extent known);
 - (v) Ernie has given the Bidder at least 5 Business Days after provision of the information referred to in clause 11.6(a)(iv) (**Bidder Proposal Period**) to provide a proposal that is matching or superior to the Competing Proposal (taken as a whole) (**Bidder Proposal**); and
 - (vi) the Bidder has not announced or otherwise formally provided a Bidder Proposal which the IBC, acting in good faith after consulting with its external financial and legal advisers, determines would provide an outcome that is more favourable to Ernie Shareholders as a whole than the relevant Competing Proposal (having regard to matters including (a) all terms and conditions and other aspects of the Bidder Proposal, including the value and type of consideration, conditionality, funding, certainty, timing or other matters affecting the probability of the Bidder Proposal being completed compared to the Competing Proposal or other relevant matters, and (b) the Competing Proposal), by the expiry of the Bidder Proposal Period.

- (b) If, in accordance with clause 11.6(a)(iv), the Bidder provides Ernie with a Bidder Proposal before the expiry of the Bidder Proposal Period which the IBC determines would provide an outcome that is no less favourable, or is more favourable, to Ernie Shareholders as a whole than the relevant Competing Proposal (having regard to matters including, but not limited to, consideration, conditionality, funding, certainty, timing or other matters affecting the probability of the Bidder Proposal being completed compared to the Competing Proposal or other relevant matters), the parties must use their reasonable endeavours to agree the amendments to this deed, the contents of the Scheme Booklet and the Scheme that are reasonably necessary to reflect the Bidder Proposal and to implement the Bidder Proposal, in each case as soon as reasonably practicable, and once agreed, as soon as reasonably practicable:
- (i) the parties must enter into an appropriate amending deed to this deed to give effect to those agreed amendments;
 - (ii) Ernie must direct that each IBC Director recommends the Bidder Proposal to Ernie Shareholders and does not recommend the applicable Competing Proposal; and
 - (iii) Ernie must implement the Bidder Proposal in accordance with the terms of the amended scheme implementation deed.
- (c) Despite any other provision in this deed, any public announcement or other statement by Ernie, the IBC or any IBC Director to the effect that:
- (i) the IBC has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 11.6; or
 - (ii) Ernie Shareholders should take no action pending the completion of the matching right process set out in this clause 11.6,
- does not:
- (iii) constitute a failure to make, or an adverse change, withdrawal adverse modification or adverse qualification of, a Recommendation or Voting Intention or an endorsement of a Competing Proposal;
 - (iv) contravene clause 5.5 or any other provision of this deed;
 - (v) give rise to an obligation to pay the Break Fee under clause 12.2; or
 - (vi) give rise to a termination right under clause 13 or any other provision of this deed.

11.7 Compliance with law

- (a) If it is finally determined by a Court, or the Takeovers Panel, that the agreement by Ernie under this clause 11 or any part of it:
- (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the IBC;
 - (ii) constituted, or constitutes, or would constitute, Unacceptable Circumstances; or

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

then, to that extent (and only to that extent) Ernie and each Ernie Group Member will not be obliged to comply with that provision of this clause 11.

- (b) The parties must not make, or cause or permit to be made, any action that would trigger the application of clause 11.7(a), including any application to a Court or the Takeovers Panel for, or in relation to, a determination referred to in clause 11.7(a).

11.8 Normal provision of information

Nothing in this clause 11 prevents Ernie or any Ernie Group Member from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, Advisers, employees, contractors, customers, joint venturers, partners and suppliers acting in that capacity and in the ordinary course of business;
- (d) providing information required to be provided by law, any Government Agency, the Listing Rules, or rules of any other applicable stock exchange;
- (e) making any announcement or disclosure in connection with a Competing Proposal;
- (f) fulfilling its continuous disclosure obligations under the Listing Rules; or
- (g) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

11.9 Legal advice

Ernie and the Bidder acknowledge that they each have received legal advice on this deed and the operation of this clause 11.

12 Break fee

12.1 Payment of costs

- (a) Ernie and the Bidder acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, each of Ernie and the Bidder will incur significant costs.
- (b) In the circumstances referred to in clause 12.1(a):
 - (i) provision has been made for the payments referred to in clauses 12.2 and 12.3 (as applicable), without which Ernie and the Bidder would not have entered into this deed or otherwise agreed to implement the Scheme; and

- (ii) Ernie and the Bidder, and the boards of Ernie and the Bidder, having taken advice from their respective external legal advisers, each believe that the implementation of the Scheme will provide benefits to it and its shareholders, and that it is reasonable and appropriate for the parties to agree to the payments referred to in clauses 12.2 and 12.3 in order to secure Ernie's and the Bidder's participation in the Transaction.
- (c) Ernie and the Bidder acknowledge that the costs actually incurred by the Bidder will be of such a nature that they cannot all be accurately ascertained and the Break Fee represents a genuine and reasonable pre-estimate of the amount to compensate Ernie or the Bidder (as applicable) for the following:
- (i) legal, financial and other professional advisory costs and fees in planning and implementing the Scheme (including costs of its Advisers) (excluding success fees);
 - (ii) internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
 - (iii) out of pocket expenses incurred by the Bidder or Ernie (as applicable) and employees, Advisers and agents of the Bidder or Ernie (as applicable) in planning and implementing the Scheme;
 - (iv) reasonable opportunity costs in pursuing the Transaction or in not pursuing alternative acquisitions or strategic initiatives; and
 - (v) any damage to the reputation of any Ernie Group Member or Bidder Group Member (as applicable) associated with a failed transaction and the implications of those damages if any Ernie Group Member or Bidder Group Member (as applicable) seeks to execute alternative acquisitions in the future,
- in each case, incurred by the Bidder or Ernie (as applicable) directly or indirectly as a result of having entered into this deed and pursuing the Transaction.
- (d) Both parties have received legal advice on this deed and the operation of this clause 12.

12.2 Break fee in favour of the Bidder

- (a) Subject to clauses 12.2(b) and 12.4, and provided the Bidder is not in material breach of a material obligation under this deed, Ernie must pay the Bidder the Break Fee in accordance with clause 12.5(a), if:
- (i) **(Recommendation):** at any time during the Exclusivity Period, any IBC Director:
 - (A) fails to make the Recommendation contemplated under clause 5.5;
 - (B) withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation; or
 - (C) indicates they no longer recommend the Transaction or recommends, supports, or endorses a Competing Proposal,

and:

(D) the Bidder terminates this deed under clause 3.4 in connection with a failure to satisfy or waive the Condition in clause 3.1(j) ('No change of Recommendation'); or

(E) Ernie terminates this deed under clause 13.1(a)(i)(C),

other than in circumstances where an IBC Director fails to make the Recommendation contemplated under clause 5.5 or withdraws their Recommendation where permitted under clauses 5.5(c)(ii) to 5.5(c)(v) (each inclusive);

(ii) (**Competing Proposal**): at any time before the End Date or, if earlier, the date the Bidder terminates this deed under clause 13, a Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party (either alone or together with any Associate):

(A) completes the Competing Proposal; or

(B) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, 50% or more of the Ernie Shares and that acquisition is unconditional; or

(iii) (**material breach**): the Bidder terminates this deed under clause 13.1(b)(i)(A) ('material breach') and the relevant material breach of this deed by Ernie is material in the context of the Scheme taken as a whole and the Transaction does not complete.

(b) Despite any other term of this deed:

(i) no Break Fee is payable if the Scheme become Effective, even if an event or circumstance specified in clause 12.2 exists or occurs;

(ii) the Break Fee is only payable to the Bidder once and once actually paid to the Bidder, the Bidder is not entitled to make any claim against Ernie for payment of any subsequent Break Fee; and

(iii) the Break Fee is not payable to the Bidder merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

12.3 Break-fee in favour of Ernie

(a) Subject to clauses 12.3(b) and 12.4, and provided Ernie is not in material breach of a material obligation under this deed, the Bidder must pay Ernie the Break Fee if Ernie terminates this deed in accordance with clause 13.1(a)(i)(A) ('material breach') and the relevant material breach of this deed by the Bidder is material in the context of the Scheme taken as a whole and the Transaction does not complete.

(b) Despite any other term of this deed:

- (i) no Break Fee is payable to Ernie if:
- (A) the Scheme become Effective, even if an event or circumstance specified in clause 12.3(a) exists or occurs; or
 - (B) at the time that the Break Fee becomes payable by the Bidder to Ernie under clause 12.3(a), the Bidder was entitled to terminate this deed under clause 13.1(b)(i)(A) and has given the appropriate termination notice to Ernie,
- notwithstanding the occurrence of any event in clause 12.3(a);
- (ii) the Break Fee is only payable to Ernie once and once actually paid to Ernie, Ernie is not entitled to make any claim against Ernie for payment of any subsequent Break Fee; and
- (iii) the Break Fee is not payable to the Bidder merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

12.4 Compliance with law

- (a) If a court or the Takeovers Panel determines that all or any part of the Break Fee:
- (i) constitutes or would, if performed, constitute:
 - (A) a breach of the fiduciary or statutory duties of the Board or the IBC, or the board of the Bidder (as applicable); or
 - (B) Unacceptable Circumstances; or
 - (ii) is unlawful or unenforceable or would, if paid, be unlawful or unenforceable for any reason,
- then neither Ernie nor the Bidder will be obliged to pay such part of the Break Fee and, if such fee has already been paid, then Ernie or the Bidder (as applicable) must within 10 Business Days after receiving written demand from the other party refund that part of the Break Fee to that party.
- (b) For the avoidance of doubt, any part of the Break Fee that would not constitute Unacceptable Circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Ernie or the Bidder (as applicable).
 - (c) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 12.4(a).

12.5 Time for payment

- (a) Ernie or the Bidder (as applicable) must pay the Break Fee to the other party, if it is payable pursuant to clause 12.2(a) or 12.3(a) (as applicable), within 15 Business Days after receipt of a written demand for payment where the Bidder is entitled under clause 12.2, or Ernie is entitled under clause 12.3, to the Break Fee.

- (b) A written notice requiring payment of the Break Fee may only be made after the occurrence of the event giving rise to the right to payment and termination of this deed in accordance with its terms and must set out the relevant circumstances which give rise to the demand requiring payment of the Break Fee and nominate an account into which the party is to pay the Break Fee.

12.6 Notification

The Bidder and Ernie (as applicable) must notify the other party in writing as soon as practicable after it becomes aware of the existence or occurrence of any event or circumstance specified in clause 12.2 or 12.3 (as applicable) and such notice must include full particulars of the relevant event or circumstance.

12.7 Survival

Any obligations under this clause 12 survive termination of this deed.

12.8 Maximum liability of Ernie

- (a) The maximum aggregate amount which Ernie is required to pay in relation to a breach of this deed (including in respect of a breach of a representation and warranty) is an amount equal to the Break Fee and in no event will the aggregate liability of Ernie under or in connection with a breach of this deed exceed an amount equal to the Break Fee, which will be the sole remedy in respect of any damages claim by the Bidder.
- (b) Where an amount becomes payable to the Bidder under clause 12.2(a) and is paid to the Bidder, the Bidder cannot make any Claim (other than a Claim under this clause 12) against any of the Ernie Indemnified Parties which directly or indirectly relates to the facts, matters, circumstances, events or other occurrences which give rise to the obligation to make the payment to the Bidder under clause 12.2(a) or otherwise.

12.9 Maximum liability of the Bidder

- (a) Subject to clauses 12.9(b) and 12.9(e), the maximum aggregate amount which the Bidder or any Bidder Affiliate (in aggregate) is required to pay in relation to a breach of this deed (including in respect of a breach of a representation and warranty) is an amount equal to the Break Fee and in no event will the aggregate liability of the Bidder under or in connection with a breach of this deed exceed an amount equal to the Break Fee, which will be the sole remedy in respect of any damages claim by Ernie.
- (b) In the event that:
- (i) an amount becomes payable to Ernie under clause 12.3(a) in relation to a wilful or intentional breach by the Bidder of this deed (**Relevant Breach**); and
 - (ii) Ernie suffers loss or damage arising directly from the Relevant Breach which exceeds the amount payable to Ernie under clause 12.3(a) (the incremental loss or damage above the amount of the Break Fee being **Additional Loss**),

then, notwithstanding clause 12.9(a), Ernie is entitled to seek to recover from the Bidder in relation to the Relevant Breach, in addition to the amount payable under clause 12.3(a), an amount equal to the lesser of:

- (iii) the Additional Loss; and
 - (iv) the Reimbursement Amount.
- (c) For the avoidance of doubt, subject to clause 12.9(e), the maximum aggregate amount which the Bidder or any Bidder Affiliate (in aggregate) is required to pay in relation to a breach of this deed (including a Relevant Breach) is an amount equal to the sum of the Break Fee and Reimbursement Amount and in no event will the aggregate liability of the Bidder under or in connection with a breach of this deed (including a Relevant Breach) exceed an amount equal to the sum of the Break Fee and the Reimbursement Amount, which will be the sole remedy in respect of any damages claim by Ernie.
- (d) Where an amount becomes payable to Ernie under clause 12.3(a) and is paid by or on behalf of the Bidder to Ernie, Ernie cannot make any Claim (other than a Claim under this clause 12) against any of the Bidder Indemnified Parties which directly or indirectly relates to the facts, matters, circumstances, events or other occurrences which give rise to the obligation to make the payment to Ernie under clause 12.3(a) or otherwise.
- (e) Subject to the Scheme becoming Effective, nothing in this clause 12.9 or otherwise in this deed will limit Bidder's liability or Ernie's ability to take action under or in connection with a breach of clause 4.3(a), the Deed Poll or the Equity Commitment Letter.

13 Termination

13.1 Termination

- (a) **(Termination by Ernie):** Without prejudice to any other rights of termination under this deed, Ernie may terminate this deed by written notice to the Bidder at:
- (i) any time before the Delivery Time:
 - (A) **(material breach):** if the Bidder is in material breach of a material obligation of the Bidder under this deed (including a material breach of any of the Bidder Representations and Warranties that is material in the context of the Scheme taken as a whole), and has failed to remedy that breach by the earlier of the Delivery Time and the date being 5 Business Days after receipt by the Bidder of a written notice from Ernie setting out details of the relevant circumstances, stating an intention to terminate this deed and requesting that the Bidder remedy the breach;
 - (B) **(Insolvency):** if the Bidder is, or becomes, Insolvent; or
 - (C) **(Change to Recommendation):** if at any time before then the IBC, by such number of IBC Directors as constitutes a majority of the IBC, changes or withdraws its Recommendation in the manner permitted under clause 5.5(c), provided that if required to

do so under clause 12, Ernie must pay the Break Fee in accordance with clause 12.

- (ii) any time:
 - (A) **(Conditions)**: in the circumstances set out in, and in accordance with, clause 3.4;
 - (B) **(restraint)**: if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction, and the action or refusal has become final and cannot be appealed or reviewed or Ernie, acting reasonably, believes that there is no realistic prospect of a successful appeal or review succeeding by the End Date; or
 - (C) **(End Date)**: if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date;

- (b) **(Termination by the Bidder)**: Without prejudice to any other rights of termination under this deed, the Bidder may terminate this deed by written notice to Ernie at:

- (i) any time before the Delivery Time:
 - (A) **(material breach)**: if Ernie is in material breach of a material obligation of Ernie under this deed (including a material breach of a representation or warranty (subject to the qualifications in clause 7.5) that is material in the context of the Scheme taken as a whole), and has failed to remedy that breach by the earlier of the Delivery Time and the date being 5 Business Days after receipt by Ernie of a written notice from the Bidder setting out details of the relevant circumstances, stating an intention to terminate this deed and requesting that Ernie remedy the breach; or
 - (B) **(Insolvency)** if Ernie is, or becomes, Insolvent;

- (ii) any time:
 - (A) **(Conditions)**: in the circumstances set out in, and in accordance with, clause 3.4;
 - (B) **(End Date)**: if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date; or
 - (C) **(restraint)**: if the Court or another Government Agency (including any other court) has taken any action permanently restraining or otherwise prohibiting or preventing the Transaction, or has refused to do anything necessary to permit the Transaction, and the action or refusal has become final and cannot be appealed or reviewed or the Bidder, acting reasonably, believes that there is no realistic prospect of a successful appeal or review succeeding by the End Date;
 - (D) **(no Recommendation)** any IBC Director (1) fails to recommend the Scheme in the manner described in clause 5.5, or (2)

withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation;

- (E) **(Competing Proposal)**: any IBC Director makes a public statement to the effect that they no longer support the Scheme or indicating that they no longer recommend the Transaction or recommend, support or endorse a Competing Proposal (but excluding a statement to the effect that no action should be taken by Ernie Shareholders pending assessment of a Competing Proposal by the IBC or the completion of the matching right process set out in clause 11.6); or
- (F) **(Ernie Prescribed Occurrence)**: an Ernie Prescribed Occurrence occurs.

13.2 Automatic termination

Without limiting any other term of this deed, this deed will terminate automatically if the Scheme is not approved at the Scheme Meeting:

- (a) unless the Court orders otherwise, by the majority specified in section 411(4)(a)(ii)(A) of the Corporations Act; and
- (b) by the majority specified in section 411(4)(a)(ii)(B) of the Corporations Act, unless the parties otherwise agree in writing.

13.3 Effect of termination

- (a) In the event of termination of this deed under clause 3.4, 13.1 or 13.2, this deed will become void and have no effect, except that the provisions of clauses 7.6 to 7.8, 10, 12, 13, 14, 15 and 16 (except clause 16.12) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

14 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 14(e) if required) **(Consideration)** is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount **(Additional Amount)** is payable by the party providing consideration for the Supply **(Recipient)** equal to the amount of GST payable on that Supply as calculated by the party making the Supply **(Supplier)** in accordance with the GST Law.
- (c) The Additional Amount payable under clause 14(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.

- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 14(b):
- (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed:
- (i) if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
 - (ii) no Additional Amount is payable under clause 14(b) in respect of a Supply to which s 84-5 of the GST Law applies.
- (f) Any reference in this clause 14 to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter in this clause 14 that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

15 Notices

15.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications (**notices**) given by a party under or in connection with this deed must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by email, sent by a person duly authorised by the sender;

- (c) directed to the intended recipient's address (as specified in clause 15.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email to that address.

15.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, either:
- (i) on the day on which the relevant postal service estimates delivery will occur; or
 - (ii) on the first day of the period during which the relevant postal service estimates delivery will occur,
- based on the most recent estimate published by the relevant postal service as at the date on which the notice is sent; or
- (c) if transmitted by email, 2 hours after transmission (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee),

but if the delivery or transmission is not on a Business Day or is after 5.00 pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00 am (recipient's time) on the next Business Day.

15.3 Address of parties

Unless varied by notice in accordance with this clause 15, the parties' addresses and other details are:

Party: **Ernie**
Attention: Barry Lewin
Address: Level 27, 580 George Street, Sydney NSW 2000
Email: Barry.Lewin@slmcorporate.com.au

With a copy to Arnold Bloch Leibler

Attention: Jeremy Leibler and Gavin Hammerschlag
Address: Level 24, 2 Chifley Square, Sydney NSW 2000
Email: jleibler@abl.com.au and ghammerschlag@abl.com.au

Party: **The Bidder**
Attention: Roy Liao (Principal) and Jordan Wappler (Senior Vice President), K1 Investment Management, LLC.
Address: 875 Manhattan Beach Blvd., Manhattan Beach, CA 90266, United States of America
Emails: rliao@k1im.com and jwappler@k1im.com and legal@k1im.com

With a copy to Gilbert + Tobin

Attention: Peter Cook and Alastair Corrigan
Address: L35, Tower Two, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo, NSW 2000, Australia
Emails: pcook@gtlaw.com.au and acorrigan@gtlaw.com.au

15.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 15.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

16 General

16.1 Entire agreement

This deed supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Deed) in respect of its subject matter and embodies the entire agreement between the parties.

16.2 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this deed prevails to the extent of the inconsistency.

16.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into this deed and the transactions contemplated by this deed are expressly excluded.
- (b) Each party acknowledges that it has performed its own searches, enquiries, investigations and evaluations prior to entering into this deed and has formed its own views on the Transaction, with no targets, projections, forecasts or other forward looking statements having been relied on by that party (and to the maximum extent permitted by law, that party will not make any Claim, and will procure that its Representatives do not make any Claim, in connection with it using or acting on such targets, projections, forecasts or other forward looking statements).
- (c) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

16.4 No third party beneficiary

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed, express or implied, is intended to or shall confer on any other person, other than the Bidder

Indemnified Parties and the Ernie Indemnified Parties, to the extent set forth in clause 7 and clause 8.

16.5 No merger

The provisions of this deed will not merge on completion of any transaction contemplated in this deed and, to the extent any provision has not been fulfilled, will remain in force

16.6 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect their authority to execute this deed under that power.

16.7 Amendment

This deed may not be amended or varied unless the amendment or variation is in writing signed by all parties.

16.8 Assignment

Subject to clause 4.2, no party may assign, transfer or otherwise deal with this deed or any right under this deed without the prior written consent of each other party.

16.9 Severability

Part or all of any provision of this deed that is illegal or unenforceable will be severed from this deed and will not affect the continued operation of the remaining provisions of this deed.

16.10 Waiver

Waiver of any power or right under this deed:

- (a) must be in writing signed by the party entitled to the benefit of that power or right;
and
- (b) is effective only to the extent set out in that written waiver.

16.11 Rights, remedies additional

Any rights and remedies that a person may have under this deed are in addition to and do not replace or limit any other rights or remedies that the person may have.

16.12 Further assurances

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this deed and the transactions contemplated by it (including, but not limited to, the execution of documents).

16.13 Duty, costs and expense

- (a) The Bidder must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme.
- (b) Except as otherwise provided in this deed, each party must bear its own legal, accounting and other costs in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

16.14 Service of process

- (a) The Bidder irrevocably:
 - (i) nominates as its agent to receive service of process or other documents with respect to any legal action or proceedings arising out of or in connection with or in any way related to this deed or its subject matter, in the courts of New South Wales: Gilbert + Tobin, L35, Tower Two, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo, NSW 2000, Australia;
 - (ii) agrees that service on that agent (or any other person appointed under clause 16.14(a)(i)) (each a **Process Agent**) will be sufficient service on it.
- (b) The Bidder must ensure that each Process Agent remain authorised to accept service on its behalf. If any Process Agent ceases to have an office in the place specified, the Bidder must ensure that there is another person in that place acceptable to Ernie to receive process on its behalf, and must promptly notify Ernie of the appointment of that other person.

16.15 Counterparts

This deed may be executed in any number of counterparts and all counterparts taken together will constitute one document.

16.16 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

Schedule 1 Bidder Representations and Warranties

2 Bidder

2.1 Status

The Bidder is a body corporate duly incorporated under the laws of the place of its incorporation.

2.2 Power

The Bidder has full legal capacity, lawful authority and corporate power to:

- (a) own property and carry on its business; and
- (b) enter into, deliver and perform its obligations under this deed.

2.3 Authorisations

The Bidder has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this deed.

2.4 Binding obligations

This deed constitutes a valid and legally binding obligation of the Bidder in accordance with its terms.

2.5 No contravention

The execution, delivery and performance of this deed will not contravene:

- (a) as far as the Bidder is aware, any law, regulation, order, judgment or decree of any court or Government Agency which is binding on the Bidder or any of its property;
- (b) any provision of the Bidder's constitution or equivalent documents; or
- (c) any agreement, undertaking or instrument which is binding on the Bidder or any of its property.

2.6 Compliance

As far as the Bidder is aware, each Bidder Group Member has complied in all material respects with all laws relating to or binding on that Bidder Group Member.

2.7 Solvency and regulatory action

The Bidder is not Insolvent nor, so far as the Bidder is aware, has any regulatory action of any nature been taken that would prevent or restrict the Bidder's abilities to fulfil its obligations under this deed.

3 Bidder details

3.1 The Bidder

The Bidder is a Bidder Affiliate and has the corporate power to carry out the Transaction.

3.2 Scheme Consideration

- (a) As at the date of this deed, the Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it the necessary funds (whether from internal cash resources or external funding arrangements) to satisfy the Bidder's obligation to pay the aggregate Cash Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
- (b) As at the Delivery Time, the Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of the Bidder) sufficient cash amounts (whether from internal cash resources or external funding arrangements) to satisfy the Bidder's obligation to pay the aggregate Cash Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
- (c) The Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding arrangements) to satisfy the Bidder's obligation to pay the aggregate Cash Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

3.3 Shareholding

As at the date of this deed, other than as disclosed to Ernie in writing prior to the date of this deed, no Bidder Group Member nor any Associate of any Bidder Group Member has a Relevant Interest in any Ernie Shares.

3.4 Equity Commitment Letter

- (a) The Bidder has disclosed a true and complete copy of the Equity Commitment Letter to Ernie.
- (b) The Equity Commitment Letter has been duly executed by the parties to the Equity Commitment Letter and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with its terms.
- (c) Subject to clause 4.2(b)(iii)(B), the Equity Commitment Letter has not been terminated or rescinded, and no party to the Equity Commitment Letter is in default thereunder (and no event has occurred which with notice, lapse of time or both, would result in a default thereunder).

- (d) Subject to clause 4.2(b)(iii)(B), without the prior written consent of Ernie, the Bidder:
- (i) will not amend, or agree to amend, the Equity Commitment Letter;
 - (ii) will not terminate, or agree to terminate, the Equity Commitment Letter;
 - (iii) will not waive, or agree to waive, any of its rights under the Equity Commitment Letter; and
 - (iv) will not agree or consent to any novation, assignment or transfer of any counter-party's obligations under the Equity Commitment Letter, except as expressly permitted under the Equity Commitment Letter.
- (e) Subject to clause 4.2(b)(iii)(B), the Bidder will enforce its rights under the Equity Commitment Letter at Ernie's request.

3.5 HoldCo

On and from the First Court Date, Bidder and any Bidder Affiliate nominated under clause 4.2 will be a wholly-owned direct or indirect Subsidiary of HoldCo.

4 Information

4.1 Bidder Information and new information

- (a) The Bidder Information:
- (i) will be prepared and included in the Scheme Booklet in good faith;
 - (ii) will not be misleading or deceptive in any material respect, including by way of omission or otherwise (with any statement of belief or opinion having been formed on a reasonable basis);
 - (iii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and relevant ASIC regulatory guides; and
 - (iv) will be provided on the understanding that Ernie and each of the Ernie Indemnified Parties will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act.
- (b) All factual information the Bidder (or any of its Representatives) has provided to Ernie prior to this deed is, to the best of the Bidder's knowledge, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information.

- (c) The Bidder will, as a continuing obligation, provide to Ernie all further or new information which may arise after the Scheme Booklet has been despatched to Ernie Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise).

4.2 Information provided to the Independent Expert

All information provided by or on behalf of the Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.

4.3 Scheme Booklet

As at the date the Scheme Booklet is despatched to Ernie Shareholders, the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act, will not be misleading or deceptive in any material respect (whether by omission or otherwise).

5 Other

5.1 No regulatory approvals

No approval from any Government Agency is required to be obtained by the Bidder in order to execute and perform this deed, other than those Regulatory Approvals contemplated by the Condition in clause 3.1(g) ('Regulatory Approvals') and any other approvals from ASIC and the Court contemplated by this deed.

5.2 No regulatory action

As at the date of this deed, no regulatory action of any nature of which the Bidder is aware has been taken or threatened that may prevent or in any way restrict its ability to fulfil its obligations under this deed, the Schemes or the Deed Poll.

5.3 No dealings with securityholders

Other than as disclosed to Ernie in writing prior to the date of this deed (including any agreements with Relevant Shareholders in respect of the Scrip Consideration), no Bidder Group Member has any agreement, arrangement or understanding with any Ernie Shareholder under which that Ernie Shareholder (or an Associate of that Ernie Shareholder) would be entitled to receive any collateral benefit in relation to the Scheme, or under which the Ernie Shareholder has agreed to vote in favour of the Scheme (or against any Competing Proposal).

5.4 No dealings with directors or employees

Other than as disclosed to Ernie in writing prior to the date of this deed (including any agreements with Relevant Shareholders in respect of the Scrip Consideration), no Bidder Group Member has any agreement, arrangement or understanding with any director or officer of Ernie relating in any way to the Scheme after the Effective Date.

5.5 Other dealings

Other than as disclosed to Ernie in writing prior to the date of this deed (including any agreements with Relevant Shareholders in respect of the Scrip Consideration), no Bidder Group Member (nor any of their respective Representatives) has any written agreement, arrangement or understanding with any person in relation to the Securities, business, operations or assets of an Ernie Group Member or the performance or conduct of the business of the Ernie Group (in whole or in part).

Schedule 2 Ernie Representations and Warranties

1 Ernie

1.1 Status

Ernie is a body corporate duly incorporated under the laws of the place of its incorporation.

1.2 Power

Ernie has full legal capacity, lawful authority, and corporate power to:

- (a) own property and carry on its business; and
- (b) enter into, deliver and perform its obligations under this deed.

1.3 Authorisations

- (a) Ernie has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this deed.
- (b) As far as Ernie is aware, the Ernie Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this deed.

1.4 Binding obligations

This deed constitutes a valid and legally binding obligation of Ernie in accordance with its terms.

1.5 No contravention

The execution, delivery and performance of this deed will not contravene:

- (a) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on Ernie or any of its property;
- (b) any provision of Ernie's constitution or equivalent documents; or
- (c) any agreement, undertaking or instrument which is binding on Ernie or any of its property.

1.6 Compliance

As far as Ernie is aware, each Ernie Group Member has complied in all material respects with all laws relating to or binding on that Ernie Group Member.

1.7 Continuous disclosure

Ernie has complied in all material respects with its continuous disclosure obligations under the Listing Rules and, other than for this Transaction, as at the date of this deed it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure (other than in relation to the Transaction).

1.8 Regulatory approvals

As far as Ernie is aware, no approval from any Government Agency is required to be obtained by Ernie in order to execute and perform this deed, other than, for the avoidance of doubt, approvals from ASIC, ASX and the Court, as contemplated by this deed.

1.9 Financial statements

- (a) As at the date of this deed, there has not been any event, circumstance, matter, event, change, effect, or development that would require Ernie to restate its financial statements as disclosed to the ASX.
- (b) As at the date of this deed, Ernie's financial statements for the financial year ended 30 June 2021, the half year ended 31 December 2021, and the financial year ended 30 June 2022:
 - (i) comply with applicable statutory requirements and were prepared in accordance with the Corporations Act, applicable accounting standards and all other applicable laws and regulations; and
 - (ii) in respect of Ernie's financial statements for the financial years ended 30 June 2021 and 30 June 2022, give a true and fair view of the financial position and the assets and liabilities of the Ernie Group.

1.10 No indebtedness

No Ernie Group Member has any indebtedness or liabilities required under the Australian Accounting Standards to be reflected on balance sheet or the notes thereto, other than those (i) specifically reflected in, fully reserved against or otherwise described in Ernie's audited financial statements as disclosed to the ASX or the notes thereto, (ii) incurred under this deed or in connection with the Scheme, or (iii) Fairly Disclosed in the Disclosure Materials.

1.11 Solvency and regulatory action

No Ernie Group Member is Insolvent nor, so far as Ernie is aware, has any regulatory action of any nature been taken that would prevent or restrict Ernie's ability to fulfil its obligations under this deed.

2 Capital structure

As at the date of this deed, there are 99,610,986 Ernie Shares, 514,968 performance rights, 514,840 options on issue in the capital of Ernie as set out in the Disclosure Materials, and, other than any rights that may be issued under the Hero Brands SHD, there are no other options, performance rights, shares, convertible notes, warrants, share rights or other securities or instruments that are still outstanding and may convert into Ernie Shares other than as set out in the Disclosure Materials (or offers or agreements to

issue any of the foregoing) and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Ernie Shares, options, performance rights, convertible notes, warrants, share rights or other securities or instruments in Ernie.

3 Information

3.1 Ernie Information and new information

- (a) The information contained in the Scheme Booklet and any supplementary disclosure made to Ernie Shareholders pursuant to this deed (in all cases, other than the Bidder Information and the Independent Expert's Report):
 - (i) will be prepared and included in the Scheme Booklet in good faith;
 - (ii) will not be misleading or deceptive in any material respect, including by way of omission or otherwise (with any statement of belief or opinion having been formed on a reasonable basis);
 - (iii) will comply in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and ASIC Regulatory Guide 60; and
 - (iv) will be provided on the understanding that the Bidder and each of the Bidder Indemnified Parties will rely on that information for the purposes of determining to proceed with the Transaction.
- (b) Ernie will, as a continuing obligation, ensure that the Scheme Booklet (but in respect of the Bidder Information only, subject to the Bidder complying with its obligations to update the Bidder Information) will be updated by all further or new information which may arise after the date of the Scheme Booklet 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 will provide the Bidder with all such information.

3.2 Information provided to the Independent Expert

All information provided by or on behalf of Ernie 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.

3.3 Scheme Booklet

As at the date the Scheme Booklet is despatched to Ernie Shareholders, the Ernie Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act, will not be misleading or deceptive in any material respect (whether by omission or otherwise).

4 Disclosure

- (a) The Disclosure Materials have been collated and prepared in good faith for the purposes of a due diligence process and in this context, the Disclosure Materials

have been collated with all reasonable care and skill and are accurate in all material respects and not materially misleading or false (including by omission).

- (b) Ernie has not knowingly included anything materially false or misleading in the Disclosure Materials.
- (c) Ernie has not knowingly withheld or omitted information from the Disclosure Materials which could reasonably be expected to be material to the Bidder's evaluation of the Ernie Group and the merits of the Transaction.

For the avoidance of doubt, Ernie makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Disclosure Materials for the purpose of the Bidder acquiring the Scheme Shares or for the Bidder's funding of those acquisitions, which are matters of which the Bidder has to satisfy itself.

Signing Page

EXECUTED as a deed

EXECUTED as a deed by Elmo Software)
Limited (ACN 102 455 087) in accordance)
with section 127 of the Corporations Act)

KATE HILL

Signature of director

KATE HILL

Full name of director (print)

Graeve

Signature of director/company secretary
(delete as applicable)

LEAH GRAEVE

Full name of director/company secretary
(print) (delete as applicable)

EXECUTED as a deed by **Manhattan Bondi**)
HoldCo, Inc. (file number 7097622) in the)
presence of:)



DocuSigned by:
Jordan Wappler

891D6DC3CF934D8...
Signature of witness

Jordan Wappler

Full name of witness (print)

DocuSigned by:
Roy Liao

2415F649C8F5414...
Signature of authorised representative

Roy Liao

Full name of authorised representative (print)

Officer

Title of authorised representative (print)

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Attachment A Indicative Timetable

Event	Date
Submit draft explanatory statement to ASIC for review	December 2022
First Court Date	To the extent practicable, December 2022*
Scheme Meeting	January 2023
Second Court Date	February 2023
Effective Date	February 2023
Scheme Record Date	February 2023
Implementation Date	February 2023

*If it is not practicable for the First Court Date to be held in December 2022, the dates in this Timetable will be extended by one month.

Attachment B Scheme of Arrangement



Scheme of Arrangement

ELMO Software Limited
ACN 102 455 087

Scheme Shareholders

Scheme of Arrangement

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Scheme of Arrangement

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Between

ELMO Software Limited ACN 102 455 087 (**Ernie**) of Level 27, 580 George Street, Sydney NSW 2000

And

Each Scheme Shareholder

Operative provisions


1 Definitions and interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Affiliate	means, in respect of a person (Primary Person), a person: <ul style="list-style-type: none">(a) Controlled directly or indirectly by a Primary Person;(b) Controlling directly or indirectly the Primary Person;(c) who is Controlled, directly or indirectly, by a person or persons who Control the Primary Person; or(d) directly or indirectly under the common Control of the Primary Person and another person or persons.
ASIC	means the Australian Securities and Investments Commission.
ASX	means, as the context requires, ASX Limited (ABN 98 008 624 691) or the securities market conducted by it.
Bidder	means Manhattan Bondi HoldCo, Inc. or, where a nomination has been made under clause 4.2 of the Scheme Implementation Deed, that Bidder Affiliate (as defined in the Scheme Implementation Deed).
Bidder Affiliate	means any Affiliate of any investment fund, vehicle or managed account advised or managed by K1 Investment Management, LLC or any of its Affiliates.
Business Day	means a day on which banks are open for general banking business in Sydney, excluding Saturdays, Sundays and public holidays.

Cash Consideration	means \$4.85 for each Scheme Share.
CHESS	means Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).
Control	has the meaning given in section 50AA of the Corporations Act, and, for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person, and, in respect of the Bidder, will include any fund, account, client, limited partnership or other collective investment vehicle or other person who is managed or advised by the Bidder and any Affiliate of the Bidder, and the terms " Controlled " and " Controlling " will have corresponding meanings.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Court	means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act as may be agreed to in writing by Ernie and the Bidder.
Deed Poll	means the deed poll executed by the Bidder and HoldCo under which the Bidder and HoldCo covenant in favour of the Scheme Shareholders to perform the obligations attributed to them under this Scheme.
Delivery Time	means 8.00 am on the Second Court Date.
Effective	means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.
Effective Date	means the date on which this Scheme becomes Effective.
Election	means an election by a Relevant Shareholder to receive their Scheme Consideration partly in the form of Scrip Consideration and partly in the form of Cash Consideration, made in accordance with clause 6.2.
Election Form	means a form issued by or on behalf of Ernie for the purposes of a Relevant Shareholder making an Election in a form agreed to by Ernie and the Bidder.
Election Time	means 5:00 pm on the third Business Day before the date of the Scheme Meeting, or such other date as is agreed in writing between Ernie and the Bidder.
Encumbrance	means a mortgage, hypothecation, charge (whether fixed or floating), pledge, lien, encumbrance, security interest (including a security interest as defined in section 12 of the <i>Personal Property Securities Act 2009</i> (Cth)), title retention, bill of sale, caveat, pledge, claim, trust arrangement, preferential right, trust arrangement, contractual right of set-off or any other form of

	encumbrance, security agreement or arrangement in favour of any person, whether registered or unregistered.
End Date	means the date that is 6 months after the date of this Scheme, or such other date as is agreed in writing between the Bidder and Ernie.
Ernie Group	means Ernie and each of its Related Bodies Corporate.
Ernie Register	means the register of members of Ernie maintained by or on behalf of Ernie in accordance with in accordance with section 168(1) of the Corporations Act.
Ernie Registry	means Link Market Services Limited ABN 54 083 214 537 or any replacement provider of share registry services to Ernie.
Ernie Share	means a fully paid ordinary share in the capital of Ernie.
Ernie Shareholder	means a holder of Ernie Shares.
First Court Date	means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing Ernie to convene the Scheme Meeting to consider the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard).
HoldCo	means  .
HoldCo Securities	means voting securities in the capital of HoldCo.
Implementation Date	means the fifth Business Day after the Scheme Record Date or such other date as agreed in writing between the Bidder and Ernie.
Listing Rules	means the official listing rules of the ASX.
Registered Address	means, in relation to a Scheme Shareholder, the address of that Scheme Shareholder shown in the Ernie Registry as at the Scheme Record Date.
Related Bodies Corporate	has the meaning given in section 9 of the Corporations Act and includes any body corporate that would be a related body corporate for the purposes of the Corporations Act if section 48(2) of the Corporations Act was omitted.
Related Entity	of a party means another entity which: <ul style="list-style-type: none"> (a) is a Related Body Corporate of the first entity; (b) is in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the party; or (c) the party Controls.
Relevant Shareholder	means an Ernie Shareholder that is, or an Affiliate or Related Entity of, an executive management team member of the Ernie Group agreed in writing to be a Relevant Shareholder for the

	purposes of this definition between Ernie and the Bidder on or prior to, or as soon as practicable following, the date of the Scheme Implementation Deed.
Scheme	means this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Bidder and Ernie.
Scheme Booklet	means the explanatory statement in respect of the Scheme prepared by Ernie pursuant to section 412 of the Corporations Act and in accordance with the Scheme Implementation Deed, and despatched to Ernie Shareholders.
Scheme Consideration	means the Cash Consideration and, if applicable, Scrip Consideration, to be provided to each Scheme Shareholder for the transfer to the Bidder of each Scheme Share.
Scheme Implementation Deed	has the meaning given to that term in clause 2(c).
Scheme Meeting	means the meetings of Ernie Shareholders, ordered by the Court to be convened under section 411(1) of the Corporations Act, at which Ernie Shareholders will vote on this Scheme and includes any meeting held following any adjournment or postponement of that meeting.
Scheme Record Date	means 7.00 pm on the fifth Business Day after the Effective Date or such other date as agreed in writing between the Bidder and Ernie.
Scheme Share	means an Ernie Share held by a Scheme Shareholder at the Scheme Record Date.
Scheme Shareholder	means a person who is an Ernie Shareholder as at the Scheme Record Date.
Scheme Transfer	means one or more proper instruments of transfer in respect of the Scheme Shares for the purpose of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.
Scrip Consideration	means such number of HoldCo Securities per Scheme Share as determined by the Bidder, to be determined on or prior to the First Court Date.
Second Court Date	means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the first day on which the adjourned application is heard).
Trust Account	means an Australian dollar denominated trust account held with an Australian bank operated by Ernie (or by the Ernie Registry on behalf of Ernie) as trustee for the Scheme Shareholders.

1.2 Interpretation

In this Scheme, except where the context otherwise requires:


- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Scheme;
- (e) a reference to this Scheme includes any schedules or annexures;
- (f) headings and sub-headings are for convenience and do not affect interpretation;
- (g) the background or recitals to this Scheme are adopted as and form part of this Scheme;
- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (j) a reference to a time is a reference to the time in Sydney, Australia;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it; and
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation.

1.3 Other rules of interpretation

In this Scheme, unless expressly provided otherwise:

- (a) **(consents and approvals)** if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement may be given conditionally or unconditionally or withheld in that party's absolute discretion;
- (b) **(Business Days)** if the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
- (c) **(Listing Rules)** Listing Rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this Scheme.

2 Preliminary matters

- (a) Ernie is an Australian public company limited by shares, registered under the Corporations Act, and has been admitted to the official list of the ASX. Ernie Shares are quoted for trading on the ASX (ASX:ELO).
- (b) Bidder is [a company incorporated in Scheme Implementation Deed) pursuant to which:
 - (i) Ernie has agreed to propose this Scheme; and
 - (ii) Ernie and the Bidder have agreed to take certain steps to implement this Scheme.
- (d) If this Scheme become Effective, then:
 - (i) all of the Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to the Bidder;
 - (ii) the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
 - (iii) Ernie will enter the name and address of the Bidder in the Ernie Register as the holder of all of the Scheme Shares.
- (e) By executing the Scheme Implementation Deed, Ernie has agreed to propose and implement this Scheme, and the Bidder has agreed to assist with that proposal and implementation, on and subject to the terms of the Scheme Implementation Deed.
- (f) The Scheme attributes actions to Bidder and HoldCo but does not itself impose an obligation on either or both of them to perform any of those actions. Each of the Bidder and HoldCo has agreed, by executing the Deed Poll, to perform the obligations attributed to it under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of the Scheme.

3 Conditions

3.1 Conditions precedent

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

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll has been terminated in accordance with its terms;
- (b) as at 8.00am on the Second Court Date, each of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in the Scheme Implementation Deed relating to the approval of the Court set out in clause 3.1(b)) has been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (c) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Ernie and the Bidder (such agreement not to be unreasonably withheld, delayed or qualified);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by Ernie and the bidder have been satisfied or waived;
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date.

3.2 Certificates

- (a) Ernie and the Bidder must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not, as at 8.00am on the Second Court Date, the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived in accordance with the terms of this Scheme.
- (b) The certificates given by Ernie and the Bidder constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived as at the Delivery Time.

3.3 End Date

This Scheme will lapse and be of no further force or effect if:

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

unless Ernie and the Bidder otherwise agree in writing.

4 This Scheme becoming effective

Subject to clause 3, this Scheme will take effect on and from the Effective Date.

5 Implementation of this Scheme

5.1 Lodgement of Court Orders with ASIC

Ernie must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court orders approving this Scheme under section 411(4)(b) of the Corporations Act as soon as possible after the Court approves this Scheme and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later date as Ernie and the Bidder agree in writing.

5.2 Transfer of Scheme Shares

Subject to the Scheme becoming Effective, the following will occur on the Implementation Date in the order set out below:

- (a) the Bidder confirming in writing to Ernie that:
 - (i) the Cash Consideration has been provided in accordance with clause 6.4(a); and
 - (ii) the Scrip Consideration has been provided in accordance with clause 6.5; and
- (b) payment by Ernie of the Cash Consideration in the manner contemplated by clause 6.4(b);
- (c) subject to the Bidder providing or procuring the provision of the Scheme Consideration in accordance with this Scheme and the Deed Poll, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidder without the need for any further act by any Scheme Shareholders (other than acts performed by Ernie or any of its directors and officers as attorney and agent for Scheme Shareholders under this Scheme), by:
 - (i) Ernie delivering to the Bidder for execution duly completed Scheme Transfers to transfer all of the Scheme Shares to the Bidder, duly executed by Ernie (or any of its directors or officers) as attorney and agent of each Scheme Shareholder as transferor under clause 9.3;
 - (ii) the Bidder duly executing the Scheme Transfers as transferee and delivering the executed ad, if necessary, stamped, Scheme Transfers to Ernie for registration; and
 - (iii) Ernie, immediately after receipt of the Scheme Transfers under clause 5.20(ii), entering, or procuring the entry of, the name and address of the Bidder in the Ernie Register as the holder of all of the Scheme Shares transferred to the Bidder in accordance with this Scheme.

6 Scheme Consideration

6.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, in consideration for the transfer to the Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder in accordance with this Scheme.

6.2 Election procedure

- (a) Ernie must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.
- (b) Subject to clauses 6.2(c), 6.2(d) and 6.2(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).
- (c) For an Election to be valid:
 - (i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme, and this clause 6.2; and
 - (ii) the Election Form must be received by the Ernie Registry at the address specified on the Election Form before the Election Time,unless the Bidder and Ernie agree otherwise, in their absolute discretion.
- (d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Ernie Shares at the Scheme Record Date, regardless of whether the Relevant Shareholder's holding at the Scheme Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless the Bidder and Ernie agree otherwise, in their absolute discretion.
- (e) A Relevant Shareholder who makes a valid Election may vary, withdraw, or revoke that Election by lodging a replacement Election Form so that it is received by the Ernie Registry at the address specified on the Election Form before the Election Time. After the Election Time, a valid Election made by a Relevant Shareholder will be irrevocable unless the Bidder and Ernie agree, in their absolute discretion, to the revocation of the Election.
- (f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by the Bidder and Ernie in writing.

6.3 Determination of Scheme Consideration

- (a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by the Scheme Shareholder.

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- (b) If a Scheme Shareholder is a Relevant Shareholder who has not made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration per Scheme Share in respect of 100% of the Scheme Shares held by that Relevant Shareholder on the Scheme Record Date.
 - (c) If a Scheme Shareholder is a Relevant Shareholder who has made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for the Scheme Shares held by the Scheme Shareholder is
 - (i) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Scrip Consideration; *plus*
 - (ii) the Cash Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive the Cash Consideration.

6.4 Provision of Cash Consideration

- (a) The obligation of Bidder to provide, or procure the provision of, the Cash Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll will be satisfied by Bidder by depositing, or procuring the deposit, into the Trust Account, of an amount in cleared funds equal to the aggregate amount of the Cash Consideration payable to all Scheme Shareholders by no later than one Business Day before the Implementation Date to be held by or on behalf of Ernie on trust for the purpose of paying the Cash Consideration to Scheme Shareholders who are entitled to receive it pursuant to clause 6.4(b) (provided that any interest on the amount so deposited, less bank fees and other charges, will accrue for the benefit of Bidder).
- (b) Subject to Bidder complying with its obligations under clause 6.4(a), Ernie must on the Implementation Date pay, or procure the payment, from the Trust Account to each Scheme Shareholder an amount equal to the applicable amount of Cash Consideration that the Scheme Shareholder is entitled to pursuant to clause 6.3 in respect of each Scheme Share held by that Scheme Shareholder as set out in the Ernie Register on the Scheme Record Date.
- (c) Ernie's obligations under clause 6.4(b) will be satisfied by Ernie (in its absolute discretion, and despite any election referred to in clause 6.4(c)(i) or authority referred to in 6.4(c)(ii) made or given by the Scheme Shareholder):
 - (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Ernie Registry to receive dividend payments from Ernie by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount to that Scheme Shareholder in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the

Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Ernie; or

- (iii) dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to that Scheme Shareholder by prepaid post to the Registered Address of that Scheme Shareholder (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.6).

6.5 Provision of Scrip Consideration

- (a) HoldCo must, by no later than 12:00 noon (or such later time as the Bidder and Ernie may agree in writing) on the Implementation Date:
 - (i) issue the number of HoldCo Securities to each Scheme Shareholder entitled to be issued with HoldCo Securities in accordance with clause 6.3; and
 - (ii) procure that the name and address of such Scheme Shareholder is entered in HoldCo's register of members as the holder of those HoldCo Securities (and in relation to HoldCo Securities issued to such Scheme Shareholder, having the same holding name and address and other details as recorded in the Ernie Register as at the Scheme Record Date).
- (b) A Scheme Shareholder that is a Relevant Shareholder that is entitled to be issued HoldCo Securities under this Scheme may, in the Election Form, direct that the HoldCo Securities to which they are entitled be issued to a Related Body Corporate of the Scheme Shareholder (in which case such Related Body Corporate's name and details will be entered into HoldCo's register of members).
- (c) On or before the date that is three Business Days after the Implementation Date, HoldCo must send or procure the sending of a certificate to each Scheme Shareholder to whom HoldCo Securities are issued under this Scheme, reflecting the issue of such HoldCo Securities.
- (d) HoldCo must ensure that:
 - (i) the HoldCo Securities issued as Scrip Consideration will, on their issue, rank equally in all respects with all other HoldCo Securities in the same class;
 - (ii) the HoldCo Securities issued as Scrip Consideration will be the same securities as are owned by the Bidder Affiliate that also holds securities in HoldCo, at the same per security price; and
 - (iii) on issue, each HoldCo Security will be fully paid and, to the extent within the control of the Bidder, free from any Encumbrance.

6.6 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Ernie, the holder whose

name appears first in the Ernie Register as at the Scheme Record Date or to the joint holders; and

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

6.7 Cancellation and re-issue of cheques

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of the Bidder.
- (a) Ernie may cancel a cheque issued under this clause 6 if the cheque:
 - (i) is returned to Ernie or the Ernie Registry; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Ernie or the Ernie Registry (which request may not be made until the date which is 20 Business Days after the Implementation Date), Ernie must reissue a cheque that was previously cancelled under clause 6.7(a).

6.8 Fractional entitlements

- (a) Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent or a fractional entitlement to a HoldCo Security, the fractional entitlement will:
 - (i) in the case of a HoldCo Security, be rounded down to the nearest whole number of HoldCo Security; and
 - (ii) in the case of Cash Consideration, be rounded to the nearest whole cent.
- (b) If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 6.8(a)) have, before the Scheme Record Date for the Scheme, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, then:
 - (i) Bidder may give notice of that opinion and relevant details to Ernie; and
 - (ii) within 2 Business Days of receipt of such notice, Ernie must give notice to those Scheme Shareholders:
 - (iii) setting out their names and registered addresses as shown in the Ernie share register;
 - (A) stating that opinion;

- (B) attributing to one of them specifically identified in the notice of the Scheme Shares held by all of them; and
- (C) attributing to one of them specifically identified in the notice which Election made by or on behalf of them applies to all of them,

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

6.9 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of Ernie's obligations under the other provisions of this clause 6 and provided the Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Scheme Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by Ernie (or by the Ernie Registry on Ernie's behalf) to the Bidder.

6.10 Orders of a court

- (a) If written notice is given to Ernie (or the Ernie Registry) of an order or direction made by a court that:
- (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Ernie in accordance with this clause 6, then Ernie will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
 - (ii) prevents Ernie from providing consideration to any particular Scheme Shareholder in accordance with this clause 6, or the payment or issuance of such consideration is otherwise prohibitive by applicable law, Ernie will be entitled to (as applicable) retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration, until such time as payment in accordance with this clause 6 is permitted by that (or another) court or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 6.10(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

7 Dealings in Shares

7.1 Dealing in Ernie Shares by Scheme Shareholders

For the purpose of establishing the persons who are Scheme Shareholders, dealings in Ernie Shares will be recognised by Ernie provided that:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Ernie Register as the holder of the relevant Ernie Shares by the Scheme Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Ernie Registry by 5.00pm on the day which is the Scheme Record Date at the place where the Ernie Register is located,

and Ernie will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders nor for any other purpose (other than to transfer to the Bidder pursuant to this Scheme and any subsequent transfers by the Bidder and its successors in title), any transfer or transmission application in respect of Ernie Shares received after such times, or received prior to such times but not in actionable or registrable form (as appropriate).

7.2 Register

- (a) Ernie must register valid registrable transmission applications or transfers of Ernie Shares in accordance with clause 7.1(a) at or before the Scheme Record Date, provided that nothing in this clause 7.2(a) requires Ernie to register a transfer that would result in a Ernie Shareholder holding a parcel of Ernie Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Ernie will be entitled to disregard any such disposal, purported disposal or agreement.
- (c) Ernie will, until the Scheme Consideration has been provided and the name and address of the Bidder has been entered in the Ernie Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Ernie Register in accordance with this clause 7, and the Ernie Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.
- (d) As from the Scheme Record Date (and other than for the Bidder following the Implementation Date), each entry in the Ernie Register as at the Scheme Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.
- (e) As soon as possible on or after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Ernie will ensure that details of the names, Registered Addresses and holdings of Ernie Shares for each Scheme Shareholder as shown in the Ernie Register are available to the Bidder.

7.3 Effect of share certificates and holding statements

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

7.4 No disposals after Scheme Record Date

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after 5.00pm on the Scheme Record Date (other than to the Bidder in accordance with this Scheme and any subsequent transfers by the Bidder and its successors in title), and any attempt to do so will have no effect and Ernie will be entitled to disregard any such disposal, purported disposal or agreement.

8 Suspension and Termination of quotation of Ernie Shares

- (a) Provided that the Scheme has been fully implemented in accordance with its terms, Ernie must apply to ASX to suspend trading of the Ernie Shares on ASX with effect from the close of business on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder, Ernie must apply to ASX for termination of official quotation of the Ernie Shares on ASX and the removal of Ernie from the official list of ASX in each case with effect on and from the close of trading on the trading day immediately following, or shortly after, the Implementation Date.
- (c) Ernie must use its best endeavours to ensure that such termination of official quotation and removal from the official list of ASX does not occur before the Implementation Date.

9 General

9.1 Further assurances

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

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- For personal use only
- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to the Bidder in accordance with the terms of this Scheme;
 - (b) acknowledges and agrees that this Scheme binds Ernie and all Scheme Shareholders (including those that did not attend the Scheme Meeting or did not vote at the Scheme Meeting or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides Ernie's constitution; and
 - (c) irrevocably consents to Ernie and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it, including Ernie doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Ernie or otherwise,

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

9.3 Appointment of Ernie as attorney for implementation of Scheme

Each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints Ernie as that Scheme Shareholder's agent and attorney for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 5.2(i); and
- (b) enforcing the Deed Poll against the Bidder and HoldCo,

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

9.4 Warranty by Scheme Shareholders

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

9.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder will, at the time of transfer of them to the Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) Upon the Scheme Consideration being provided to the Scheme Shareholders and until Ernie registers the Bidder as the holder of all Scheme Shares in the Ernie Register, the Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Ernie of the name and address of the Bidder in the Ernie Register as the holder of the Scheme Shares.

9.6 Appointment of the Bidder as attorney and agent for Scheme Shares

- (a) From the time that the Bidder has satisfied its obligations in clause 6 until the Bidder is registered in the Ernie Register as the holder of all Scheme Shares, each Ernie Shareholder:
 - (i) without the need for any further act by that Ernie Shareholder, irrevocably appoints the Bidder as its proxy to (and irrevocably appoints the Bidder as its agent and attorney for the purpose of appointing any director or officer of the Bidder as that Ernie Shareholder's proxy and, where appropriate, its corporate representative to):
 - (A) attend shareholders' meetings of Ernie;
 - (B) exercise the votes attaching to the Ernie Shares registered in the name of the Ernie Shareholder; and
 - (C) sign any Ernie Shareholders' resolution;
 - (ii) must take all other action in the capacity of an Ernie Shareholder as the Bidder reasonably directs; and
 - (iii) acknowledges and agrees that in exercising the powers referred to in this clause 9.6(a), the Bidder and any person nominated by the Bidder under clause 9.6(a) may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares.
- (b) From the time that the Bidder has satisfied its obligations in clause 6.2 until the Bidder is registered in the Ernie Register as the holder of all Scheme Shares, no Ernie Shareholder may attend or vote at any meetings of Ernie Shareholders or sign any Ernie Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 9.6.

9.7 Binding effect of this Scheme

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

9.8 Enforcement of Deed Poll

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

9.9 Notices

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

9.10 Duty

The Bidder will

- (a) pay all duty (including stamp duty and any relates fines, penalties and interest) payable on or in connection with this Scheme and any instrument executed under or any transaction evidence by this Scheme (including the transfer by Scheme Shareholders of the Scheme Shares to the Bidder pursuant to this Scheme); and
- (b) indemnify each Scheme Shareholder against any liability arising from the failure to comply with clause 9.10(a).

9.11 Alterations and conditions to Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions, Ernie may, by its counsel or solicitors:

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

9.12 Service of process

- (a) The Bidder irrevocably:
 - (i) nominates as its agent to receive service of process or other documents with respect to any legal action or proceedings arising out of or in connection with or in any way related to this Scheme or its subject matter, in the courts of New South Wales: Gilbert + Tobin at Level 35 Tower Two, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo, NSW 2000; and
 - (ii) agrees that service on that agent (or any other person appointed under clause 9.12(a)(i)) (each a **Process Agent**) will be sufficient service on it.

- (b) The Bidder must ensure that each Process Agent remains authorised to accept service on its behalf. If any Process Agent ceases to have an office in the place specified, the Bidder must ensure that there is another person in that place acceptable to Ernie to receive process on its behalf, and must promptly notify Ernie of the appointment of that other person.

9.13 Governing law

This Scheme is governed by the laws of New South Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts in New South Wales and of the courts competent to determine appeals from those courts.

Attachment C Deed Poll



For personal use only

Scheme Deed Poll



Arnold Bloch Leibler

Level 21, 333 Collins Street
Melbourne Victoria 3000 Australia

Level 24, Chifley Tower, 2 Chifley Square
Sydney NSW 2000 Australia

Scheme Deed Poll

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Scheme Deed Poll


Details

Date

By  (Bidder)

and  (HoldCo)

In favour of each **Scheme Shareholder**

- Background
- A Elmo Software Limited ACN 102 455 087 (**Ernie**) and [Manhattan Bondi HoldCo, Inc./the Bidder] have entered into a Scheme Implementation Deed dated  2022 (the **Scheme Implementation Deed**).
 - B [Manhattan Bondi HoldCo, Inc. has nominated the Bidder pursuant to clause 4.2 of the Scheme Implementation Deed.]
 - C Under the Scheme Implementation Deed, Ernie has agreed to propose the Scheme and Ernie and the Bidder have agreed to take certain steps to implement the Scheme, in each case on the terms of the Scheme Implementation Deed.
 - D In accordance with the Scheme Implementation Deed, each of the Bidder and HoldCo enters into this document to covenant in favour of each Scheme Shareholder that they will observe and perform the obligations attributed to them under the Scheme.

1 Definitions and interpretation

1.1 Definitions

Terms used in this document have the same meaning as in the Scheme Implementation Deed unless otherwise defined in this document or the context requires otherwise.

1.2 Rules for interpreting this document

The rules in clauses 1.2 ('Words and expressions') and 1.3 ('Other rules of interpretation') of the Scheme Implementation Deed apply in interpreting this document, unless the context makes it clear that a rule is not intended to apply.

1.3 Nature of deed poll

The Bidder acknowledges and agrees that:

- For personal use only
- (a) this document may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
 - (b) under the Scheme, each Scheme Shareholder irrevocably appoints Ernie and each of its directors and officers, jointly and severally, as its agent and attorney to enforce this document against the Bidder and HoldCo.

2 Condition and termination

2.1 Condition

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

2.2 Termination

The respective obligations of the Bidder and HoldCo under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms before the Effective Date; or
 - (b) the Scheme does not become Effective before the End Date,
- unless Ernie and the Bidder otherwise agree in writing.

2.3 Consequences of termination

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

- (a) each of the Bidder and HoldCo is released from its obligations under this document except those obligations under clause 6.2; and
- (b) each Scheme Shareholder retains any rights, powers or remedies they have against the Bidder and HoldCo in respect of any breach of this document that occurred before it was terminated.

3 Scheme obligations

3.1 Scheme obligations

Subject to clause 2, each of the Bidder and HoldCo covenants in favour of each Scheme Shareholder that it will each duly and punctually observe and perform all obligations attributable to it under and in accordance with the Scheme.

3.2 Scheme implementation

The Bidder will do all things that it is each required to do under the Scheme Implementation Deed to implement the Scheme.

4 Warranties

Each of the Bidder and HoldCo represents and warrants in favour of each Scheme Shareholder that:

- (a) (**status**) it is a corporation validly existing under the laws of its place of incorporation;
- (b) (**power**) it has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- (c) (**corporate authority**) it has taken all necessary corporate action to authorise the execution of this document and has taken or will take all necessary corporate action to authorise the performance of this document;
- (d) (**documents effective**) this document is its valid and binding obligation enforceable in accordance with its terms;
- (e) (**no contravention of law**) the execution and performance by it of this document and each transaction contemplated by it did not and will not violate in any respect a provision of:
 - (i) a law, treaty, judgment, ruling, order or decree binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement that is binding on it;
- (f) (**insolvency**) it is not Insolvent.

5 Continuing obligations

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

- (a) the Bidder and HoldCo have each fully performed its obligations under this document; or
- (b) the earlier termination of this document under clause 2.

6 General

6.1 Notices

- (a) All notices, requests, demands, consents, approvals, offers, agreements or other communications (**notices**) given by a party under or in connection with this document must be:
 - (i) in writing;
 - (ii) signed by a person duly authorised by the sender or, where transmitted by email, sent by a person duly authorised by the sender;

- (iii) directed to the intended recipient's address (as specified in clause 6.1(c) or as varied by any notice); and
 - (iv) hand delivered, sent by prepaid post or transmitted by email to that address.
- (b) A notice given in accordance with this clause 6.1 is taken as having been given and received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, either:
 - (A) on the day on which the relevant postal service estimates delivery will occur; or
 - (B) on the first day of the period during which the relevant postal service estimates delivery will occur,based on the most recent estimate published by the relevant postal service as at the date on which the notice is sent; or
 - (iii) if transmitted by email, 2 hours after transmission (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee),

but if the delivery or transmission is not on a Business Day or is after 5.00 pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00 am (recipient's time) on the next Business Day.

- (c) Unless varied by notice in accordance with this clause 6.1, the parties' addresses and other details are:

Party:	The Bidder and HoldCo
Attention:	[insert]
Address:	[insert]
Email:	[insert]
With a copy to	[insert]
Attention:	[insert]
Address:	[insert]
Email:	[insert]

- (d) For the avoidance of doubt, the requirement in clause 6.1(a)(i) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

6.2 Stamp duty and costs

The Bidder will

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Shareholders of the Scheme Shares to the Bidder pursuant to the Scheme and this document;
- (b) indemnify each Scheme Shareholder against any liability arising from a failure to comply with clause 6.2(a); and
- (c) bear and be responsible for its own costs arising out of the negotiation, preparation and execution of this document.

6.3 Amendment

A provision of this document may not be amended or varied:

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

and each of the Bidder and HoldCo enters into a further deed poll in favour of each Scheme Shareholder giving effect to that amendment or variation.

6.4 Assignment

The rights and obligations of the Bidder and of each Scheme Shareholder under this document are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior written consent of Ernie, the Bidder and HoldCo.

6.5 Waiver

Waiver of any power or right under this document:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

6.6 Rights, remedies additional

Any rights and remedies that a person may have under this document are in addition to and do not replace or limit any other rights or remedies that the person may have.

6.7 Further assurances

Each party must, at its own expense, do or cause to be done all things necessary or reasonably desirable to give full effect to this document and the transactions contemplated by it (including, but not limited to, the execution of documents).

6.8 Service of process

- (a) The Bidder irrevocably:
 - (i) nominates as its agent to receive service of process or other documents with respect to any legal action or proceedings arising out of or in connection with or in any way related to this document or its subject matter, in the courts of New South Wales: Gilbert + Tobin at Level 35 Tower Two, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo, NSW 2000; and
 - (ii) agrees that service on that agent (or any other person appointed under clause 6.8(a)(i)) (each a **Process Agent**) will be sufficient service on it.
- (b) The Bidder must ensure that each Process Agent remains authorised to accept service on its behalf. If any Process Agent ceases to have an office in the place specified, the Bidder must ensure that there is another person in that place acceptable to Ernie to receive process on its behalf, and must promptly notify Ernie of the appointment of that other person.

6.9 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will constitute one document.

6.10 Governing law and jurisdiction

- (a) This document will be governed by and construed in accordance with the laws in force in the State of New South Wales.
- (b) Each of Bidder and HoldCo irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this document; and
 - (ii) waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.10(b)(i).

Signing Page

EXECUTED as a deed poll.

