

## ASX ANNOUNCEMENT



Vita Group Limited  
ACN 113 178 519  
77 Hudson Road  
Albion Qld 4010

15 March 2023

Market Announcements Office  
Australian Securities Exchange  
4<sup>th</sup> Floor, 20 Bridge Street  
SYDNEY NSW 2000

### ELECTRONIC LODGEMENT

Dear Sir or Madam

#### **Vita Group Limited (ASX: VTG) – Scheme Implementation Agreement**

In accordance with the Listing Rules, please find enclosed an announcement titled 'Vita Group enters into Scheme Implementation Agreement with Practice Management Pty Ltd' for immediate release to the market.

This announcement has been authorised for lodgement by Vita Group's Board of Directors.

For enquiries relating to this announcement, please contact:

Andrew Ryan  
Chief Financial Officer  
Mob: 0417 644 756

George Southgate  
Chief Legal and Risk Officer / Company Secretary  
Mob: 0412 514 030

Yours sincerely

A handwritten signature in black ink, appearing to read "George Southgate".

**George Southgate**  
Chief Legal and Risk Officer / Company Secretary  
Vita Group Limited

15 March 2023

## Vita Group enters into Scheme Implementation Agreement with Practice Management Pty Ltd

### Key Highlights

- Scheme consideration of \$0.06255 cash per VTG share.
- VTG is permitted to pay a fully franked Permitted Dividend of up to \$0.06425 per VTG share, subject to the scheme being approved by shareholders and the Court. The scheme consideration of \$0.06255 per VTG share will not be reduced by the amount of any such permitted dividend, therefore delivering a total value to Vita Group shareholders of up to \$0.12680 per VTG share.<sup>1</sup>
- **Total value to VTG shareholders of up to \$0.12680 per VTG share** (before the benefit of any franking credits) **implies an equity value, on a 100% fully diluted basis, of approximately \$22.3m** and represents:
  - a 59% premium to VTG's undisturbed closing share price on 14 March 2023 of \$0.800 per VTG share;
  - a 45% premium to the one-month volume weighted average price (VWAP) to 14 March 2023 of \$0.0876 per VTG share; and
  - a 31% premium to the three-month VWAP to 14 March 2023 of \$0.0969 per VTG share.
- Vita Group's Board of Directors unanimously recommends that Vita Group's 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 Vita Group's shareholders. Subject to that same qualification, all Vita Group Directors, intend to vote all of their Vita Group shares in favour of the Scheme.
- The Scheme is subject to certain standard conditions, including approval from Vita Group's shareholders and Court approval which must be satisfied before it can be implemented.

### Overview of the Scheme

Vita Group Limited (**Vita Group** or **VTG**) (ASX: VTG) announces that it has entered into a scheme implementation agreement (**SIA**) with Practice Management Pty Ltd (**Practice Management**) under which Practice Management will acquire 100% of the issued shares of Vita Group by way of a court approved scheme of arrangement (**Scheme**) for a cash consideration of \$0.06255 per VTG share (**Scheme Consideration**).

Under the terms of the Scheme, Vita Group shareholders will be entitled to receive the Scheme Consideration, subject to all applicable conditions being satisfied or waived and the Scheme being implemented.

### Permitted Dividend

Under the terms of the SIA, Vita Group is permitted to pay a fully franked special dividend of up to \$0.06425 per VTG share (**Permitted Dividend**) on or before the Scheme implementation date and subject to the Scheme being approved by shareholders and the Court. The Scheme Consideration will not be reduced by the cash amount per share of any Permitted Dividend (or any associated franking credits).

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<sup>1</sup> Subject to being a VTG shareholder as at 7.00pm (Sydney time) on the respective record date for the permitted dividend and the record date for the Scheme. Also subject to the Vita Group board declaring the permitted dividend and that dividend being declared up to the stated amount.

If the Permitted Dividend is declared and paid, the Permitted Dividend would have up to approximately \$0.02754 per VTG share in franking credits attached. There may be an opportunity for eligible shareholders, subject to their personal tax circumstances, including their tax residency and marginal tax rate, to receive a benefit from franking credits attached to any such Permitted Dividend. The amount of the Permitted Dividend will be determined by the Vita Group Board (in its absolute discretion) having regard to a range of factors, including tax advice, and the availability of franking credits. Details of any Permitted Dividend will be provided in the scheme booklet to be provided to Vita Group shareholders in relation to the Scheme.

### **Vita Group Directors Unanimously Recommend the Scheme**

The Vita Group Board unanimously recommends that Vita Group shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interest of Vita Group shareholders. Subject to those same qualifications, each Vita Group director intends to vote all of the Vita Group shares held or controlled by them (representing collectively 19.26% of the total VTG shares on issue). The Scheme is subject to limited conditions as described below.

Commenting on the Scheme, Vita Group Independent Non-Executive Chair, Paul Mirabelle said, *“After due consideration, the Vita Group Board has unanimously determined that the Scheme is in the best interest of Vita Group shareholders. In arriving at this conclusion, the Board, including independent directors, considered multiple factors including a view on the intrinsic value of the Artisan business keeping in mind the early stage of the business. We believe the outcome is positive for shareholders and other stakeholders including our customers, employees, executives and suppliers in the current circumstances.”*

### **Details of the Scheme Implementation Agreement**

The implementation of the Scheme is subject to a limited number of standard conditions which include:

- Vita Group shareholder approval;
- Court approval;
- no material adverse change;
- no prescribed occurrences;
- no regulatory restraints; and
- the Independent Expert’s Report concluding and continuing to conclude that the Scheme is in the best interest of Vita Group shareholders.

The Scheme does not include any funding condition or any regulatory approval condition other than approval from ASIC, ASX and the Court.

The SIA contains customary exclusivity provisions in favour of Practice Management including no shop, no talk, no due diligence, and a right to respond to a competing proposal.

Full details of the conditions of the Scheme and other agreed terms are set out in the SIA, a copy of which is attached to this ASX announcement (with certain schedules redacted).

### **Indicative timetable and next steps**

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

A Scheme Booklet containing information relating to the Scheme, the Independent Expert’s Report, the reasons for Vita Group directors’ unanimous recommendation and details of the Scheme meeting, is expected to be provided to Vita Group shareholders in May 2023. Vita Group shareholders will then

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have the opportunity to vote on the Scheme at the Court-convened Scheme meeting, which is expected to be held in June 2023. These dates are indicative only and subject to change.

### **Advisers**

Vita Group is being advised by Record Point (financial adviser) and MinterEllison (legal adviser).

Practice Management is being advised by Gilbert + Tobin.

This announcement is authorised for release by the Board of Directors of Vita Group Limited.

### **Further enquiries:**

George Southgate  
Chief Legal and Risk Officer / Company Secretary  
Mob: 0412 514 030

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Execution version

# Scheme Implementation Agreement

—  
Vita Group Limited (**Target**)  
Practice Management Pty Ltd (**Bidder**)

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Brisbane Qld 4000 Australia DX 102 Brisbane  
T +61 7 3119 6000 F +61 7 3119 1000  
[minterellison.com](http://minterellison.com)

MinterEllison.

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# Scheme Implementation Agreement

## Project Barrett

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# Details

Date 15 March 2023

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## Parties

Name Vita Group Limited  
ACN 113 178 519  
Short form name **Target**  
Notice details Address: 77 Hudson Road, Albion QLD 4010  
Attention: George Southgate, Chief Legal & Risk Officer and Group Company Secretary  
Email: [George.Southgate@vitagroup.com.au](mailto:George.Southgate@vitagroup.com.au)

Name Practice Management Pty Ltd  
ACN 128 741 515  
Short form name **Bidder**  
Notice details Level 21, 225 George St Sydney NSW 2000  
Attention: Rachel Lunn, General Counsel & Company Secretary with a copy to Elise Taylor, Director – Business Development  
Email: [Rachel.Lunn@scs.com.au](mailto:Rachel.Lunn@scs.com.au) with a copy to [Elise.Taylor@scs.com.au](mailto:Elise.Taylor@scs.com.au)

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## Background

- A Target and Bidder have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B Target and Bidder have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this agreement, unless the context otherwise requires, the following words and expressions have meanings as follows:

**Acceptable Confidentiality Agreement** means a confidentiality agreement which contains confidentiality obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of Bidder under the Confidentiality Agreement.

**Accounting Standards** means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a);

**Adviser** means in relation to an entity:

- (a) a financier to the entity in connection with the Proposed Transaction; or
- (b) a financial, corporate, legal, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Proposed Transaction by the entity.

**Announcement** means an announcement by Target in relation to the Proposed Transaction, in the form agreed by Target and Bidder (both acting reasonably), prior to signing of this agreement.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this agreement and Target was the designated body.

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market known as the Australian Securities Exchange operated by it.

**Authorised Person** means, in respect of a person:

- (a) a director, officer or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

**Bidder Break Fee** has the meaning given to that term in clause 14.1(a).

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

**Bidder Information** means such information regarding Bidder that is provided by or on behalf of Bidder, or any of their Advisers, to Target or the Independent Expert for inclusion in the Explanatory Booklet in accordance with this agreement.

**Bidder Parties** means each member of the Bidder Group and its Related Bodies Corporate and Authorised Persons.

**Bidder Warranties** means the representations and warranties of Bidder set out in clause 9.1.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Queensland, Australia or New South Wales, Australia.

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

**Competing Proposal** means any actual, potential or proposed offer, proposal or expression of interest, transaction or arrangement (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed substantially in accordance with its terms:

- (a) a person or two or more persons who are Associates (other than Bidder or an Associate of Bidder) would directly or indirectly:
- (i) acquire a Relevant Interest or Voting Power in or become the holder of more than 20% of the Shares or the securities of any member of the Target Group;
  - (ii) enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 20% or more of the Shares or of the securities of any member of the Target Group;
  - (iii) acquire, obtain a right to acquire, or otherwise obtain an economic interest in, 50% or more by value of the business or property of Target or any member of the Target Group; or
  - (iv) acquire control of Target or any member of the Target Group, within the meaning of section 50AA of the Corporations Act; or
  - (v) otherwise acquire or merge with Target or any member of the Target Group or amalgamate with, or acquire a significant shareholding or economic interest in Target or any member of Target Group or 50% or more by value of the assets or business of any member of Target Group, whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for Target or other synthetic merger or any other transaction or arrangement;
- (b) Target will cease to be admitted to the official list of ASX or the Shares will cease to be officially quoted on the market operated by ASX; or
- (c) may otherwise compete with, or be inconsistent in any material respect with the consummation of, the Proposed Transaction, and would require Bidder or Target to abandon the Proposed Transaction.

**Conditions** means the conditions set out in clause 3.1 and **Condition** means any one of them.

**Confidentiality Agreement** means the confidentiality agreement between Target and Bidder's Related Body Corporate dated on or around 27 June 2022.

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

**Court** means the Federal Court of Australia (Sydney Registry) or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Data Room** means the Project Barrett data room hosted by Ansarada.

**Deed Poll** means the deed poll to be executed by Bidder prior to the First Court Date, in the form set out in Schedule 2 or in such other form as is acceptable to Target acting reasonably.

**Delivery Time** means, in relation to the Second Court Date, 2 hours before the commencement of the hearing or if the commencement of the hearing is adjourned, the commencement of the

adjourned hearing, of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.

**Due Diligence Material** means the information disclosed by or on behalf of Target and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to Bidder or any of their respective Authorised Persons prior to the date of this agreement in the Data Room as evidenced conclusively by the USB provided by Target to Bidder on execution of this agreement.

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

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

**End Date** means:

- (a) 10 September 2023; or
- (b) such other date and time agreed in writing between Bidder and Target.

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

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

**Explanatory Booklet** means the explanatory booklet to be prepared by Target in respect of the Proposed Transaction in accordance with the terms of this agreement and to be dispatched to Target Shareholders.

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

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

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any 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 Target Shareholders present and voting, either in person or by proxy.

**Implementation Date** means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Record Date for the Scheme.

**Independent Expert** means an expert, independent of the parties, engaged by Target in good faith to prepare the Independent Expert's Report.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Target for inclusion in the Explanatory Booklet, which includes a statement or opinion from the Independent Expert on whether the Scheme is in the best interest of Target Shareholders, and includes any update of that report by the Independent Expert.

**Insolvency Event** means in relation to a person:

- (a) **insolvency official:** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** 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 the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **ceasing business:** the person ceases or threatens to cease to carry on business;
- (f) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **deregistration:** the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement:** the person executing a deed of company arrangement;
- (i) **person as trustee or partner:** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
  - (i) a breach of trust or obligation as partner by the person;
  - (ii) the person acting outside the scope of its powers as trustee or partner;
  - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
  - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (i) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

**Interest Rate** means the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

**Key Person** means any officer, director, executive or other employee of the Target Group, whose total employment cost exceeds \$220,000.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**Material Adverse Change** means an event or circumstance that occurs, is announced or becomes known to Bidder or the Target Board (in each case whether or not it becomes public) after the date of this agreement which has or could reasonably be expected to have a materially adverse effect on the Target Group's reputation or a material loss of trust in the Target Group or its business, but does not include any event or circumstance:

- (a) required to be done or procured by Target under this agreement or the Scheme;
- (b) which Bidder has previously approved in writing;
- (c) to the extent that it was Fairly Disclosed in the Due Diligence Materials;
- (d) to the extent that it was:
  - (i) Fairly Disclosed in documents that were publicly available prior to the date which is two Business Days prior to the date of this agreement from public filings of Target with ASIC or public registers; or
  - (ii) Fairly Disclosed in filings of Target with the ASX in the 12 months prior to the date of this agreement;
- (e) relating to costs and expenses incurred by Target associated with the Scheme process, including all fees payable to external advisers of Target, to the extent such amounts are Fairly Disclosed in the Due Diligence Material; or
- (f) relating to payment by Target of a Permitted Dividend.

**Material Contracts** means the contracts identified as material contracts as agreed in writing by the parties on or before the date of this agreement.

**Permitted Dividend** means the special dividend referred to in clause 6.5.

**Proposed Transaction** means:

- (a) the proposed acquisition by Bidder in accordance with the terms and conditions of this agreement, of all of the Shares through the implementation of the Scheme; and
- (b) all associated transactions and steps contemplated by this agreement.

**Record Date** means, in respect of the Scheme, 7.00pm on the second Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

**Regulatory Approvals** means the approvals set out in clause 3.1(a).

**Related Body Corporate** of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

**Relevant Interest** has the meaning given in the Corporations Act.

**RG 60** means Regulatory Guide 60 issued by ASIC on 22 September 2011, as amended from time to time.

**Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Target and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by Target and 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 each party.

**Scheme Consideration** means, in respect of each Scheme Share held by a Scheme Shareholder, \$0.06255 cash.

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

**Scheme Share** means a Share on issue as at the Record Date.

**Scheme Shareholder** means a person who holds one or more Scheme Shares.

**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 scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard.

**Senior Manager** means an employee of any member of the Target Group reporting directly to the chief executive officer of Target.

**Share** means an issued fully paid ordinary share in the capital of Target.

**Share Splitting** means the splitting by a holder of Shares into two or more parcels of Shares whether or not it results in any change in beneficial ownership of the Shares.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having received written advice from their reputable external Australian legal advisers specialising in the area of corporate law and financial advisers):

- (a) is reasonably likely to be completed in accordance with its terms, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the Proposed Transaction, taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty and timing.

**Target Break Fee** has the meaning given to that term in clause 13.1(a)

**Target Board** means the board of directors of Target (or any committee of the board of directors of Target constituted to consider the Proposed Transaction on behalf of Target).

**Target Director** means a director of Target.

**Target Group** means Target and its Subsidiaries.

**Target Parties** means each member of the Target Group and its Related Bodies Corporate and Authorised Persons.

**Target Information** means information to be included by Target in the Explanatory Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Target Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of the Target Board and has not previously been disclosed to Target Shareholders, other than the Bidder Information and the Independent Expert's Report.

**Target Prescribed Occurrence** means the occurrence of any of the following on or after the date of this agreement:

- (a) Target converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Target Group resolves to reduce its share capital in any way;
- (c) any member of the Target Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Target Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option other than under the valid exercise of an option or performance right on issue or in existence immediately before the date of this agreement or the issue of any securities that have been approved by Target Shareholders prior to the date of this agreement;
- (e) any member of the Target Group issues, or agrees to issue, convertible notes;
- (f) any member of the Target Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the Target Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to any member of the Target Group;
- (i) Target pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution other than in respect of any Permitted Dividend;
- (j) any member of the Target Group makes any change to its constitution or convenes a meeting to consider a resolution to change a constitution of any member of the Target Group;
- (k) any member of the Target Group ceases, or threatens to cease to, carry on the business conducted as at the date of this agreement;
- (l) any member of the Target Group (other than a dormant, non-operating member of the Target Group) being deregistered as a company or being otherwise dissolved;
- (m) any disposal of shares or securities by a member of the Target Group in any member of the Target Group other than to a member of the Target Group; or
- (n) any member of the Target Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (m) above insofar as it applies to the member of the Target Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;

provided that a Target Prescribed Occurrence will not include any matter:

- (o) required to be done or procured by the Target Group under this agreement or the Scheme;
- (p) required by law, regulation or by an order of a court or Governmental Agency;
- (q) to the extent it is Fairly Disclosed in filings of Target with the ASX in the 12 months prior to the date of this agreement;
- (r) to the extent it is Fairly Disclosed in the Due Diligence Material; or
- (s) the undertaking of which Bidder has previously approved in writing.



**Target Shareholder** means each person who is registered in the register maintained by Target under section 168(1) of the Corporations Act as a holder of Shares.

**Target Warranties** means the representations and warranties of Target set out in clause 9.4.

**Timetable** means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the parties.

**Transaction** means the acquisition by Bidder of the Scheme Shares for the Scheme Consideration under the Scheme.

**Voting Power** has the meaning given in the Corporations Act.

## 1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to time is to Sydney, Australia time;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) a reference to **Fairly Disclosed** means disclosed to any of Bidder, the Target (as applicable) or any of their respective Authorised Persons to a sufficient extent and in sufficient detail so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction and experienced in transactions similar to the Proposed Transaction in the skin-health and

wellness industry, to identify the nature and scope of the relevant matter, event or circumstance.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

### **1.4 Business Day**

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

### **1.5 Consents or approvals**

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

### **1.6 Listing requirements included as law**

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### **1.7 Reasonable endeavours**

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

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
  - (b) to commence any legal action or proceeding against any person,
- except where that provision specifies otherwise.

## **2. Agreement to propose Scheme**

- (a) Target agrees to propose and implement the Scheme on and subject to the terms and conditions of this agreement, and to take reasonable actions within its control to implement the Scheme substantially in accordance with the Timetable.
- (b) Bidder agrees to assist Target in proposing and implementing the Scheme on and subject to the terms and conditions of this agreement, and to take reasonable actions within its control to implement the Scheme substantially in accordance with the Timetable.
- (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, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe

### 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 on and from the Effective Date in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals)**  
before the Delivery Time on the Second Court Date, ASIC and ASX issue or provide such consents or approvals as are necessary or which Target and Bidder agree are necessary or desirable to implement the Scheme and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
- (b) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgement, order or decree issued by any Court of competent jurisdiction or Governmental Agency in Australia or other legal restraint or prohibition preventing, prohibiting or materially restricting the implementation of the Scheme is in effect as at the Delivery Time on the Second Court Date;
- (c) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date;
- (d) **(No change of Target Board recommendation)** between the date of this agreement and the date of the Scheme Meeting, none of the Directors of Target changing, qualifying or withdrawing their unanimous recommendation to Target Shareholders to vote in favour of the Scheme (other than as permitted under clause 5.2), which recommendation may be expressed to be given:
  - (i) in the absence of a Superior Proposal; and
  - (ii) subject to the Independent Expert opining that the Scheme is in the best interest of Target Shareholders;
- (e) **(Shareholder approval)** the Scheme is approved by Target Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (f) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);
- (g) **(Independent Expert)** the Independent Expert concluding in the Independent Expert's Report that in its opinion the Scheme is in the best interest of Target Shareholders and the Independent Expert maintaining that opinion (including by not withdrawing, qualifying or changing that opinion) at all times up to the Second Court Date; and
- (h) **(No Material Adverse Change)** no Material Adverse Change occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date.

#### 3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (Regulatory Approvals) and 3.1(b) (Restraints) is for the benefit of each party and any breach or non-fulfilment of it may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.1(c) (No Target Prescribed Occurrences), 3.1(d) (No change of Target Board recommendation) and 3.1(h) (No Material Adverse Change) are for the sole benefit of Bidder and any breach or non-fulfilment of them may only be waived by Bidder giving its written consent.

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- (c) The Condition in clause 3.1(g) (Independent Expert) is for the sole benefit of Target and any breach or non-fulfilment of them may only be waived by Target giving its written consent.
  - (d) A party entitled to waive a Condition under this clause 3.2 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 on the Second Court Date. The Conditions in clauses 3.1(e) (Shareholder approval) and 3.1(f) (Court approval) cannot be waived.
  - (e) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived.

### 3.3 Reasonable endeavours

- (a) Target and Bidder will use their respective reasonable endeavours to procure that:
  - (i) each of the Conditions (as applicable) is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require); and
  - (ii) it does not take, or omit to take, any action that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition (except to the extent such action is required to be taken or procured pursuant to, or is otherwise permitted by, this agreement or the Scheme, or is required by law).
- (b) In respect of the Condition in clause 3.1(b) (No Target Prescribed Occurrence), if:
  - (i) a Target Prescribed Occurrence occurs between the date of this agreement and the Delivery Time, and provided the Target has fully complied with clause 3.4(c) in respect of such Target Prescribed Occurrence, the Condition Precedent in clause 3.1(b) (No Target Prescribed Occurrence) will not be taken to have been breached or not satisfied;  
  
unless:
    - (ii) Target has given written notice to Bidder that a Target Prescribed Occurrence has occurred in accordance with clause 3.4, and such notice also sets out the relevant circumstances of the breach;
    - (iii) Target has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which such notice is given; and
    - (iv) Bidder has not otherwise provided a waiver of the breach within 10 Business Days of receiving notice of the breach (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date).

### 3.4 Notifications

Each of Bidder and Target must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become unsatisfied or incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

### 3.5 Certificate

- (a) At or before the hearing on the Second Court Date, Bidder and Target will provide a joint certificate to the Court confirming whether or not the Conditions set out in clause 3.1(a) (Regulatory Approvals) and clause 3.1(b) (Restraints) have been satisfied or waived in accordance with the terms of this agreement;
- (b) Target will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(c) (No Target Prescribed Occurrences), 3.1(d) (No change of Target Board recommendation), 3.1(e) (Shareholder approval), 3.1(g) (Independent Expert) and 3.1(h) (No Material Adverse Change) have been satisfied or waived in accordance with the terms of this agreement;
- (c) Target will provide a certificate to Bidder confirming whether or not Target has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breach; and
- (d) Bidder will provide a certificate to Target confirming whether or not Bidder has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breach.

### 3.6 Scheme voted down

If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and 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 Target 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 Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

### 3.7 Conditions not capable of being fulfilled

- (a) If:
  - (i) any Condition is not satisfied or (where capable of waiver) waived by the date specified in this agreement for its satisfaction (or an event occurs which would or is likely to prevent a condition precedent being satisfied by the date specified in this agreement);
  - (ii) a circumstance occurs with the result that a Condition is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within 5 Business Days after the occurrence of the circumstance; or
  - (iii) it becomes more likely than not that the Scheme does not become Effective by the End Date,then Target and Bidder must consult in good faith with a view to determining whether:
  - (i) the Transaction may proceed by way of alternative means or methods;
  - (ii) to extend the relevant time or date for satisfaction of the Condition;

- (iii) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
- (iv) to extend the End Date.
- (b) Subject to clause 3.7(c), if a Condition becomes incapable of being satisfied before the End Date and Bidder and Target are unable to reach agreement under clause 3.7(a) within 5 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:
- (i) in relation to the Conditions in clauses 3.1(a) (Regulatory Approval), 3.1(b) (Restrictions), and 3.1(e) (Shareholder approval), either Bidder or Target may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone; and
- (ii) in relation to the Conditions in clauses 3.1(c) (No Target Prescribed Occurrences) and 3.1(d) (No change of Target Board recommendation) and 3.1(h) (No Material Adverse Change), Bidder may terminate this agreement by giving Target notice without any liability to any party by reason of that termination alone; and
- (iii) in relation to the Condition in clause 3.1(g) (Independent Expert), Target may terminate this agreement by giving Bidder notice without any liability to any other party by reason of that termination alone.
- (c) A party will not be entitled to terminate this agreement under clause 3.7(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this agreement by that party; or
- (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

### **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 a Condition relating to a Regulatory Approval – the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; 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 agreement).

## **4. Transaction Steps**

### **4.1 Scheme**

- (a) Target must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose the Scheme under which, subject to the Scheme becoming Effective, all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.
- (b) Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Scheme without the prior written consent of Bidder.

## 4.2 Scheme Consideration

Bidder covenants in favour of Target (in Target's own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to Bidder of the Scheme Shares under the terms of the Scheme) Bidder will:

- (a) accept that transfer on the Implementation Date; and
- (b) pay (or procure the payment), into a trust account operated by Target as trustee for the Scheme Shareholders of an amount equal to the aggregate amount of the Scheme Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of Bidder) so that the Scheme Consideration can be provided to the Scheme Shareholders on the Implementation Date, in accordance with the Scheme.

## 4.3 Deed Poll

Bidder covenants in favour of Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) to execute, deliver and perform the Deed Poll prior to the dispatch of the Explanatory Booklet.

# 5. Recommendation, intentions and announcements

## 5.1 Target Board Recommendation and Voting Intention

- (a) Subject to clause 5.2, Target must ensure that the Announcement and the Explanatory Booklet state that each Target Director:
  - (i) considers the Scheme to be in the best interest of Target Shareholders and that the Target Director recommends that Target Shareholders vote in favour of the Scheme (**Recommendation**); and
  - (ii) intends to cause any Target Shares in which it has a Relevant Interest to be voted in favour of the Scheme (**Voting Intention**),in each case qualified only by words to the effect of:
  - (iii) *'in the absence of a Superior Proposal'*; and
  - (iv) other than in respect of the Explanatory Booklet, *'subject to the Independent Expert concluding that the Scheme is in the best interest of Target Shareholders'* and in any public document issued after the Explanatory Booklet, *'subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders'*
- (b) Subject to clause 5.2, Target must ensure that the Target Board collectively, and the members of the Target Board individually, do not change, withdraw or modify, or make any public statement or take any other action that is inconsistent with, its, his or her Recommendation or Voting Intention unless:
  - (i) Target has received, other than as a result of a breach of clause 15, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Target, an announcement has been made which attracts section 631(1) of the Corporations Act; or
  - (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 Target Shareholders (other than where the conclusion is due to the existence of a Competing Proposal),

and in each case Target has fully complied with its obligations under clause 15 (including ensuring that all of Bidder's rights under clause 15.8 have been exhausted).

- (c) Despite anything to the contrary in this clause 5.1 or elsewhere in this agreement, a statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 15.8 shall not contravene this clause 5.1 or any other provision of this agreement.

## 5.2 Exclusion from Recommendation

The obligation of Target under clause 5.1 to ensure that each Target Director provides and maintains the Recommendation is qualified to the extent that:

- (a) any Target Director considers, after first obtaining written advice from independent senior counsel of the Victorian, Queensland or New South Wales bar, that he or she should not provide or continue to maintain any recommendation (positive or adverse) because that Target Director has an interest in the Scheme that is so materially different from other Target Shareholders which would properly preclude or render it inappropriate for him or her to provide any such recommendation; or
- (b) if a Court, ASIC or the Takeovers Panel requires that the relevant Target Director to change, withdraw, qualify or modify, or abstain from making, their Recommendation.

## 5.3 Confirmation

Target represents and warrants to Bidder that each Target Director has confirmed his or her agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 5.1(b), and to otherwise act in accordance with clause 5.1.

## 5.4 Promotion of Scheme

During the Exclusivity Period, Target must procure that the senior executives of Target or its Related Bodies Corporate as reasonably requested by Bidder participate in efforts to promote the merits of the Scheme, including:

- (a) meeting with key Target Shareholders;
- (b) communicating with Target's employees, customers and suppliers and the employees, customers and suppliers of Target's Related Bodies Corporate; and
- (c) communicating with the public to promote the merits of the Scheme, other than in the circumstances referred to in clause 5.1(b).

# 6. Scheme – parties' respective implementation obligations

## 6.1 Target's obligations

Target must 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 and after the date of this agreement and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(Explanatory Booklet)** prepare the Explanatory Booklet in accordance with clause 6.3;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;



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- (c) **(review of draft Independent Expert's Report)** on receipt from the Independent Expert, provide Bidder with the draft report received from the Independent Expert for factual accuracy review (noting in each case that any draft of the Independent Expert's Report provided to Bidder for review will not include those sections containing the Independent Expert's opinion on valuation), and promptly give to the Independent Expert any comments that Bidder provides Target in relation to factual matters regarding Bidder in any draft of the Independent Expert's Report;
  - (d) **(approval of draft for ASIC and ASX)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft 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 and to ASX for its review and approval for the purposes of Appendix 7A to the Listing Rules;
  - (e) **(liaison with ASIC and ASX)** as soon as reasonably practicable after the date of this agreement:
    - (i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with clauses 6.1(d) and 6.2(e), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act and to ASX for its review and approval for the purposes of Appendix 7A to the Listing Rules; and
    - (ii) liaise with ASIC and ASX during the period of their respective consideration of that draft of the Explanatory Booklet and keep Bidder reasonably informed of any matters raised by ASIC or ASX in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters (provided that, where any matters relate to Bidder Information, Target must not take any steps to address them without the prior written consent of Bidder, not to be unreasonably withheld or delayed);
  - (f) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Explanatory Booklet for dispatch to the Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
  - (g) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
  - (h) **(confirmation of no objection from ASX)** Request ASX to confirm that it has no objection to the draft Explanatory Booklet;
  - (i) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 6.1(f) and 6.2(f) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
  - (j) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
  - (k) **(information):**
    - (i) provide reasonable information about the Scheme and the Target Shareholders to Bidder and its Related Bodies Corporate, which Bidder requests and reasonably requires in order to:
      - (A) canvass views on the Scheme by Target Shareholders;

- (B) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration; or
- (C) review the tally of proxy appointments and directions received by Target before the Scheme Meeting;
- (ii) within 5 Business Days after the date of this agreement, provide Bidder with:
  - (A) a copy of the Target Register as at the date of this agreement to the extent doing so does not breach applicable privacy laws; and
  - (B) the most recently available information in Target's possession regarding the beneficial ownership of Target Shares including a copy of the most recent beneficial ownership analysis report received by Target (which, for the avoidance of doubt, may be as at a date prior to the date of this agreement);
- (iii) provide Bidder:
  - (A) on a fortnightly basis, a copy of the latest Target Register; and
  - (B) on a fortnightly basis, the most recently available information in Target's possession regarding the beneficial ownership of Target Shares including a copy of the most recent beneficial ownership analysis report received by Target,

provided that if the Target Register or any beneficial ownership analysis report is received by Target more frequently than on a fortnightly basis Target must provide Bidder with a copy of each such report after it is received by Target;

- (l) (**convene Scheme Meeting**) take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Target Shareholders and convening and holding the Scheme Meeting;
- (m) (**updating Explanatory Booklet**) until the date of the Scheme Meeting, promptly update the Explanatory Booklet with any information that arises after the Explanatory Booklet has been dispatched that is necessary to ensure that the Explanatory Booklet does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement) including where, after dispatch of the Explanatory Booklet, Target becomes aware:
  - (i) that information included in the Explanatory Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed by Scheme Shareholders under any applicable law but was not included in the Explanatory Booklet.
- (n) (**Court approval application if parties agree that conditions are capable of being satisfied**) if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.6 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Scheme;
- (o) (**appeal process**) if the Court refuses to make any orders directing Target to convene the Scheme Meeting or approving the Scheme:
  - (i) Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and

- (ii) Target must appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (p) **(implementation of Scheme)** if the Scheme is approved by the Court:
- (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
  - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (q) **(Regulatory notifications)** in relation to the Regulatory Approvals, lodge with any Governmental Agency within the relevant periods all documentation and filings required by law to be so lodged by Target in relation to the Proposed Transaction;
- (r) **(Bidder Information)** without the prior written consent of Bidder, not use the Bidder Information for any purposes other than those contemplated by this agreement or the Scheme;
- (s) **(Documents)** consult with Bidder in relation to the content of the documents required for the purpose of the Scheme including originating process, affidavits, submissions and draft minutes of Court orders;
- (t) **(Shareholder support)** promote to its shareholders the merits of the Scheme and encourage Target Shareholders to vote on the Scheme in accordance with the recommendation of the Target Board, including soliciting proxy votes in favour of the Scheme; and
- (u) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

## 6.2 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Target to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) **(Bidder Information)** provide to Target, in a form appropriate for inclusion in the Explanatory Booklet, all Bidder Information that is required by all applicable law, the Listing Rules and RG 60 (to the extent relevant to the Bidder Information) for inclusion in the Explanatory Booklet, which information must:
  - (i) 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 Explanatory Booklet; and
  - (ii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been dispatched 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) **(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 Bidder in relation to the Proposed Transaction;

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- (c) (**Independent Expert**) promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
  - (d) (**review of Explanatory Booklet**) as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Target and provide comments on those drafts in good faith;
  - (e) (**approval of draft for ASIC and ASX**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the appropriate representatives of Bidder is held to consider approving those sections of that draft that relate to Bidder as being in a form appropriate for provision to ASIC and ASX for review;
  - (f) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the appropriate representatives of Bidder is held to consider approving those sections of the Explanatory Booklet that relate to Bidder as being in a form appropriate for dispatch to Target Shareholders, subject to approval of the Court;
  - (g) (**Representation**) procure that Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
  - (h) (**Target Information**) without the prior written consent of Target, not use Target Information for any purposes other than those contemplated by this agreement or the Scheme; and
  - (i) (**Compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

### 6.3 Explanatory Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, Target must prepare the Explanatory Booklet in compliance with:
  - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
  - (ii) this clause 6.3.
- (b) The Explanatory Booklet will include:
  - (i) the terms of the Scheme;
  - (ii) the notice of Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting and for any ancillary meeting;
  - (iii) the Target Information;
  - (iv) the Bidder Information;
  - (v) a summary of this agreement;
  - (vi) a copy of the executed Deed Poll; and
  - (vii) a copy of the Independent's Expert Report.
- (c) The Explanatory Booklet must include a statement that:
  - (i) other than the Bidder Information and the Independent Expert's Report, the Explanatory Booklet has been prepared by Target and is the responsibility of Target, and that to the maximum extent permitted by law, Bidder assumes no responsibility for the accuracy or completeness of the Explanatory Booklet (other

- than Bidder Information and will disclaim any liability for any information appearing in the Explanatory Booklet other than the Bidder Information); and
- (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and that to the maximum extent permitted by law, Target assumes no responsibility for the accuracy or completeness of the Bidder Information and will disclaim any liability for any Bidder Information appearing in the Explanatory Booklet).
- (d) Target must make available to Bidder drafts of the Explanatory Booklet (excluding any part of the draft of the Independent Expert's Report which contains the Independent Expert's opinion), consult with 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 Bidder on those drafts. Bidder acknowledges and agrees that Target has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as provided in this agreement with respect to the Bidder Information.
  - (e) Target must seek approval from Bidder for the form and context in which the Bidder Information appears in the Explanatory Booklet, which approval Bidder must not unreasonably withhold or delay, and Target must not lodge the Explanatory Booklet with ASIC until such approval is obtained from Bidder.
  - (f) If Target and Bidder disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If complete agreement is not reached after reasonable consultation, then:
    - (i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the Bidder Information, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet; and
    - (ii) if the disagreement relates to the form or content of the Bidder Information, Target will make such amendments to the form or content of the disputed part of the Bidder Information as Bidder reasonably requires.
  - (g) Target must take all reasonable steps to ensure that the Explanatory 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 dispatched to Target Shareholders.
  - (h) 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 Explanatory Booklet is dispatched to Target Shareholders.
  - (i) Target must provide to Bidder all such further or new information of which Target becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
  - (j) Bidder must provide to Target all such further or new information of which Bidder becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Bidder Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.
  - (k) Target must undertake reasonable verification processes in relation to the information included in the Explanatory Booklet (other than the Bidder Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).
  - (l) Bidder must undertake reasonable verification processes in relation to the Bidder Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).

- (m) Target and Bidder each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of Target Shareholders and Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 6.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

#### **6.4 Conduct of Court proceedings**

- (a) Bidder is entitled to separate representation at all Court proceedings affecting the Proposed Transaction.
- (b) Nothing in this agreement gives Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.

#### **6.5 Payment of Permitted Dividend and internal payments**

- (a) Despite any other provision of this agreement, Target may in, its sole discretion, declare and pay a dividend up to \$0.06425 per Share (**Permitted Dividend**) to Target Shareholders, provided that:
- (i) the Permitted Dividend is to be declared on or prior to the Effective Date, and in any event by no later than the last date permitted by the Listing Rules to declare that dividend such that the record date for the Permitted Dividend will be on the same day as the Record Date
  - (ii) the payment date for the Permitted Dividend will be the Implementation Date;
  - (iii) the Permitted Dividend will be franked to the maximum extent possible, subject to the franking account of Target not being in deficit after the payment of the Permitted Dividend;
  - (iv) the Permitted Dividend is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of Target existing immediately prior to the declaration of that dividend; and
  - (v) the franking account of the Target must not have less than \$21,500,000 of franking credits following payment of the Permitted Dividend (and if requested by Bidder, the Target must provide supporting evidence of such fact); and
  - (vi) payment of the Permitted Dividend must comply with the Corporations Act.
- (b) Despite any other provision of this agreement, Target may make any intra group distributions and payments between members of the Target Group, in order to be able to declare and pay the Permitted Dividend in accordance with clause 6.4(a).
- (c) The parties acknowledge and agree that if the Permitted Dividend is declared in accordance with clause 6.4(a), the Scheme Consideration will not be reduced by the amount of the Permitted Dividend.
- (d) The provisions of this clause 6.4 do not prevent the determination or payment of a dividend by Target if this agreement is terminated.

## 7. Conduct of business before the Implementation Date

### 7.1 Conduct of Target business

- (a) Subject to clause 7.2(a), from the date of this agreement up to and including the Implementation Date, Target must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
- (i) operate those businesses consistent with past practice, in substantially the same manner as previously conducted in the 12 month period prior to the date of this agreement, excluding any impacts arising from the disposal of the Target's ICT business;
  - (ii) 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 Key Persons;
  - (iii) use reasonable endeavours to ensure that the condition of its business and all assets are maintained in the normal course consistent with past practice;
  - (iv) maintain (and where necessary use reasonable efforts to renew) each of its authorisations and licences applicable to each member of the Target Group held by that member as at the date of this agreement;
  - (v) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Target Group is a party, and with laws, authorisations and licences applicable to each member of the Target Group;
  - (vi) keep Bidder reasonably informed of any material developments concerning the Target Group; and
  - (vii) not take or fail to take any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence.
- (b) Without limiting clause 7.1(a) but subject to clause 7.2(a), Target must not, and must procure that its Subsidiaries do not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- (i) other than the Permitted Dividend, declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of a dividend, capital reduction or otherwise;
  - (ii) incur any additional Financial Indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs as Fairly Disclosed in the Due Diligence Material) or guarantee or indemnify the obligations of any person other than a member of the Target Group;
  - (iii) other than as approved in writing by Bidder (not to be unreasonably withheld or delayed), amend or take any action that:
    - (A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; or
    - (B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of,  
  
any Financial Indebtedness to which one or more members of the Target Group are a party;
  - (iv) give or agree to give a financial benefit to a related party of Target (other than a related party that is a Target Group Member), except on arm's length terms;

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- (v) make any change to its constitution;
  - (vi) (except as required by law or as provided in an existing contract in place as at the date of this agreement as Fairly Disclosed in the Due Diligence Material) enter into or make any material change to the terms of employment of (including increasing the remuneration or compensation of), any Key Person, in each case other than relating to rights or entitlements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Material;
  - (vii) amend the terms of any option, performance right, or share plan;
  - (viii) enter into a single new employment contract with a potential employee of the Target Group under which contract the total remuneration payable to that potential employee would exceed \$200,000 in any 12 month period;
  - (ix) enter into a series of new employment contracts with potential employees of the Target Group under which contracts the total aggregate remuneration payable to those potential employees would exceed \$400,000 in aggregate in any 12 month period;
  - (x) accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right or share plan) for, in aggregate, in excess of \$100,000;
  - (xi) terminate or encourage the resignation of a Key Person, except for cause (acting reasonably) in accordance with contractual arrangements in effect on the date of this agreement or otherwise in accordance with current personnel practices;
  - (xii) pay any of its officers, directors, executives or other employees a bonus, severance, termination or retention payment in excess of \$400,000 (in aggregate), other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Material;
  - (xiii) make any concession or acknowledgment in respect of, or vary any pattern of work of, any employee or group of employees that is reasonably expected to give rise to a future potential claim, dispute or liability for the Target Group that may reasonably give rise to potential costs or liability of more than \$200,000 in aggregate for all such potential costs or liabilities;
  - (xiv) settle or compromise any dispute, audit on inquiry in relation to tax or duty or amends any tax return;
  - (xv) either (A) sell, assign, transfer or grant any exclusive licence to, or (B) abandon or permit to let lapse or expire, any intellectual property material to the business of the Target Group as conducted as at the date of this agreement;
  - (xvi) commence, threaten in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding that relates to potential costs or liability of more than \$200,000 (after allowing for insurance recoveries);
  - (xvii) (except under contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Material) enter into any enterprise bargaining agreement or similar collective employment agreement;
  - (xviii) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$100,000, individually or when aggregated with all such businesses, real property, entities or undertakings the subject of the transaction or series of related or similar transactions;
  - (xix) incur or enter into commitments involving capital expenditure of more than \$200,000 whether in one transaction or a series of related transactions;



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- (xx) enter into any contract, joint venture, partnership or commitment involving total expenditure greater than \$200,000 per year, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments;
  - (xxi) except for amendments, terminations, or non-renewals in the ordinary course of business consistent with past practice that would not be material to the Target Group, modify, amend, waive, fail to enforce (in each case, in any material respect), assign or terminate any Material Contract of the Target Group;
  - (xxii) pay any third party costs or expenses incurred by the Target Group in connection with the transactions contemplated by this agreement, including Adviser fees, in excess of \$2,300,000;
  - (xxiii) alter in any material respect any accounting policy of any member of the Target Group, other than any change required by applicable accounting standards;
  - (xxiv) waive any material third party default where:
    - (A) the financial impact of the waiver on the Target Group as a whole will be in excess of \$100,000 (individually or in aggregate); and
    - (B) the reasonable cost of recovery from the third party in respect of that default will be in excess of the financial impact of the waiver;
  - (xxv) take out any insurance policy with respect to the Target Group or any of its directors or officers.

## 7.2 Permitted activities

- (a) The obligations of Target under clause 7.1 do not apply in respect of any matter:
  - (i) required to be done or procured by Target under, or which is otherwise contemplated by, this agreement or the Scheme;
  - (ii) required by law, Accounting Standards or by an order of a court or Governmental Agency;
  - (iii) required to reasonably and prudently respond to the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof) or any other disease, epidemic, pandemic or outbreak or the like affecting humans, 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 any lockdowns, travel restrictions, quarantining, work force reductions, closures, social distancing, absenteeism and restrictions of and on activities, venues and gatherings, or other requirements, restrictions or obligations having regard to any applicable recommendations, guidance or directions of a Governmental Agency, provided Target has consulted with Bidder in good faith and taken into account any reasonable requests from Bidder;
  - (iv) required to renew an existing insurance policy of the Target Group;
  - (v) required in order to pay any tax or duty when due;
  - (vi) which, in the reasonable opinion of Target, is a necessary and prudent response to any emergency or disaster to preserve the financial position or operations of the business of the Target Group (including, but not limited to an epidemic or pandemic or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property) and it is impractical to seek the approval of Bidder prior to giving effect to the response;
  - (vii) subject to clause 7.2(b), Fairly Disclosed in the Due Diligence Material or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Target with ASX, ASIC or public registers as being

actions that the Target Group may carry out between the date of this agreement and the Implementation Date; or

- (viii) the undertaking of which Bidder has approved in writing (which approval must not be unreasonably withheld or delayed).
- (b) Target must, in respect of any matter referred to in clause 7.2(a)(vii) above that it proposes to undertake:
- (i) if the Due Diligence Material permits the carrying out of the action only in accordance with certain conditions, ensure those conditions are met;
  - (ii) not undertake that matter (or commit to undertake that matter) without first consulting with Bidder; and
  - (iii) promptly provide Bidder with any information regarding the matter reasonably requested by Bidder.

Clause 7.2(b) does not operate to provide Bidder with a veto right in respect of any matter referred to in clause 7.2(a)(vii).

### 7.3 Access

- (a) In the period from the date of this agreement to the Implementation Date and for so long as the Target Board continues to publicly recommend that Target Shareholders vote in favour of the Scheme, Target must:
- (i) procure that at least two members of Target's executive management team meet with representatives of Bidder on a fortnightly basis to assist with, among other things:
    - (A) keeping Bidder fully informed of the matters contemplated by clause 7.3(a)(ii) below; and
    - (B) providing Bidder with access to information and people it has requested under clause 7.3(a)(iv) below;
  - (ii) procure that a weekly meeting is held between representatives of the Target and the Bidder to discuss developments relating to the Target Group and the Proposed Transaction;
  - (iii) keep Bidder fully informed of all material developments relating to the Target Group;
  - (iv) promptly following a reasonable request by Bidder, provide Bidder (and its Authorised Persons) with access to:
    - (A) documents and information relating to the Target Group;
    - (B) executives and Senior Management of the Target Group; and
    - (C) Target head office employees, subject to a member of Senior Management of the Target Group being present during any such discussions with Target head office employees,for the purpose of or in connection with:
    - (D) planning the transition of the Target Group and other matters relating to the conduct of the Target Group following the Implementation Date (including for the avoidance of doubt, determining pre and post Implementation restructure requirements and employment options);
    - (E) obtaining a general understanding of the operation and performance of the Target Group's business;

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- (F) the financing arrangements in respect of the Proposed Transaction, including any refinancing of existing financial indebtedness of the Target Group;
  - (G) holding discussions with third parties, with the consent of Target (such consent not to be unreasonably withheld or delayed) that Bidder and its Authorised Persons reasonably wish to enter into with respect to the Proposed Transaction prior to the Implementation Date, including procuring that employees of any member of Target Group participate in such discussions;
  - (H) otherwise facilitating the Proposed Transaction; and
  - (I) any other purpose that is agreed in writing between Target and Bidder.
- (b) Nothing in this clause 7.3 obliges Target to provide to Bidder or its Authorised Persons any information:
- (i) concerning the Target Directors' consideration of the Scheme; or
  - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) Target will provide reasonable assistance to Bidder for the purpose of satisfying Target's obligations under this clause 7.3 but nothing in this clause 7.3 requires Target to provide access to its people or documentation or to take any other action which would involve refreshing or updating the Due Diligence Material or which would disrupt the usual and ordinary course of Target's businesses and operations.
- (d) The parties agree and acknowledge that nothing in this clause 7.3 requires Target to provide any information that is different or in addition to the information Target provides to its Board and Senior Managers in the usual and ordinary course consistent with past practice.

#### **7.4 Change of control rights**

- (a) As soon as practicable after the date of this agreement, Target must seek to identify any change of control or similar provisions in leases and material contracts to which Target or a Target Group company is a party which may be triggered by the implementation of the Proposed Transaction.
- (b) In respect of those leases and contracts, Target and Bidder will agree a proposed course of action and, if agreed, Target must initiate contact with the relevant landlords and other counter-parties and request that they provide any consents required. None of Bidder or any of their Authorised Persons may contact any landlords or other counter-parties without Target's approval (which approval must not be unreasonably withheld).
- (c) A failure by a member of the Target Group to obtain any landlord or third party consent will not constitute a breach of this agreement by Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this agreement.
- (d) In respect of Material Contracts, the parties agree as follows:
  - (i) Target must, as soon as practicable after the date of this agreement, apply to the counterparties to these contracts for consent in relation to the Proposed Transaction.
  - (ii) Target must use reasonable endeavours to obtain the consents referred to in clause 7.4(d)(i) as expeditiously as possible and, in any event, prior to the Second Court Date and to ensure that once obtained, the consents are not withdrawn, cancelled or revoked, including by:

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- (A) cooperating with, and doing all things reasonably requested by, Target, Bidder or the counterparty to a Material Contract;
  - (B) promptly provide any information reasonably required by a counterparty to a Material Contract; and
  - (C) make representatives of Target available, where necessary, to meet with counterparties to Material Contracts to deal with issues arising in relation to the change of control of Target.
- (e) Bidder must provide any assistance (including providing factual information regarding Bidder and attending relevant meetings) reasonably requested by Target for the purposes of Target complying with its obligations under this clause 7.4, except that Bidder is not responsible for any costs incurred in connection with any application for or granting of consent from the counterparties to the Material Contracts.
  - (f) Target must not, without the prior written consent of Bidder which must not be unreasonably withheld or delayed, incur any costs other than reasonable travel and legal expenses in connection with performing its obligations under this clause.

## 8. Actions on and following Implementation Date

### 8.1 Reconstitution of the board of each member of the Target Group

- (a) On the Implementation Date, but subject to the Scheme Consideration having been paid in full by Bidder to Target and receipt by Target of signed consents to act, Target must take all actions necessary (and in accordance with the constitution of the Target Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by Bidder as new Target Directors and new directors of each Subsidiary.
- (b) Without limiting clause 8.1(a), on the Implementation Date, but subject to receipt by Target of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any member of the Target Group, Target must procure that:
  - (i) all outgoing Target Directors resign from the Target Board; and
  - (ii) all outgoing directors of each Subsidiary of Target resigns from their office.

### 8.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

- (a) Bidder will provide the Scheme Consideration to Target in accordance with the Scheme;
- (b) Target will disburse the Scheme Consideration to Scheme Shareholders in accordance with the Scheme;
- (c) the Target Board and the board of each Subsidiary of Target will be reconstituted in accordance with clause 8.1;
- (d) Bidder will acquire all of the Scheme Shares in accordance with the Scheme; and
- (e) Target will apply to ASX to be removed from the official list of ASX with effect from a date nominated by Bidder.

## 9. Representations and warranties

### 9.1 Bidder representations

- (a) Bidder represents and warrants to Target (on Target's own behalf and separately as trustee for each of the other Target Parties) each of the matters set out in clause 9.1(b) as

at the date of this agreement and on each subsequent day until the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

- (b) Bidder represents and warrants that:
- (i) Bidder is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
  - (iii) this agreement constitutes legal, valid and binding obligations on it and this agreement does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Bidder is a party or is bound;
  - (iv) the Bidder Information provided to Target in accordance with clause 6.2(a)(ii) for inclusion in the Explanatory Booklet will:
    - (A) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
    - (B) be provided on the understanding that each of the Target Indemnified Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
  - (v) as at the date the Explanatory Booklet is dispatched to Target Shareholders, the Bidder Information, in the form and context in which that information appears in the version of the Explanatory 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);
  - (vi) Bidder will, as a continuing obligation, provide to Target all such further or new information which may arise after the Explanatory Booklet has been dispatched 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 Explanatory 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);
  - (vii) all factual information Bidder has provided to Target prior to this agreement is, to the best of 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;
  - (viii) as at the date of this agreement Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;
  - (ix) by the Delivery Time on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Bidder) sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy Bidder's obligation to pay the

Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;

- (x) Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding including debt and equity financing arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll; and
- (xi) between the date of this agreement and the Record Date, Bidder will not, and will procure that each other member of the Bidder Group does not, enter into any arrangement under which it obtains the beneficial interest in any Shares, unless the Shares are registered in the name of Bidder.

## **9.2 Bidder's indemnity**

Bidder agrees with Target (on Target's own behalf and separately as trustee or nominee for each of the other Target Parties) to indemnify and keep indemnified the Target Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Target Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

## **9.3 Qualifications on Bidder's representations, warranties and indemnities**

The representations and warranties in clause 9.1 and the indemnity in clause 9.2 are each subject to matters which:

- (a) are expressly provided for in this agreement;
- (b) are within the actual knowledge of Target, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this agreement:
  - (i) Pete Connors;
  - (ii) George Southgate; and
  - (iii) Andrew Ryan.

## **9.4 Target representations**

- (a) Target represents and warrants to Bidder each of the matters set out in clause 9.4(b) as at the date of this agreement and on each subsequent day until on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Target represents and warrants that:
  - (i) Target is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery of this agreement by Target has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
  - (iii) this agreement constitutes legal, valid and binding obligations on Target and the execution of this agreement of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Target or any of its Subsidiaries is a party or to which they are bound;

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- (iv) the Target Information contained in the Explanatory Booklet was prepared and included in good faith and will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
  - (v) as at the date the Explanatory Booklet is dispatched to Target Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
  - (i) all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Explanatory Booklet;
  - (ii) any statement of belief or opinion contained in the Explanatory Booklet (other than with respect to the Bidder Information or Independent Expert's Report) is honestly held and there are reasonable grounds for Target holding that belief or opinion;
  - (iii) as at the date of this agreement, the total issued capital of Target comprises 175,871,832 Shares and there are no other Target options, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing);
  - (iv) as at the date of this agreement, Target is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to Bidder on or before the date of this agreement);
  - (v) so far as Target is aware, each member of the Target Group has complied in all material respects with all laws or regulations applicable to them (or order of any Governmental Agency having jurisdiction over them);
  - (vi) as at the date of this agreement, there is no judgment, injunction, order or decree binding on any member of the Target Group that has or would be likely to have the effect of prohibiting, materially restricting or materially impairing after the Effective Date any business of Target Group as presently being conducted;
  - (vii) as at the date of this agreement, no member of the Target Group, nor the assets, properties or business of any member of the Target Group, is subject to any judgment, order, writ, injunction or decree of any court, Governmental Agency or arbitration tribunal and so far as Target is aware:
    - (A) there are no material actions, suits, arbitrations, legal or administrative proceedings pending against any member of the Target Group; and
    - (B) no member of the Target Group is the subject of any pending investigation, other than as Fairly Disclosed in the Due Diligence Material;
  - (viii) each member of the Target Group has all material licenses, permits and franchises necessary for it to conduct its business;
  - (ix) as at the date of this agreement, neither ASIC nor ASX (as applicable) has made a determination against any member of the Target Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules;
  - (x) during the 3 year period prior to the date of this agreement, no member of the Target Group nor, to the Target Group's knowledge, any of the officers, directors,

employees, agents, intermediaries, representatives, suppliers or joint venture partners of any member of the Target Group has, directly or indirectly, in connection with the business of the Target Group:

- (A) requested, received, made, offered, authorised, solicited or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;
  - (B) requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
  - (C) requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
  - (D) established or maintained any unlawful fund of corporate monies or other properties;
  - (E) created or caused the creation of any false or inaccurate books and records of any member of the Target Group related to any of the foregoing;
  - (F) otherwise directly or indirectly violated any local or international anti-corruption or anti-bribery law (including, without limitation, the US Foreign Corrupt Practices Act of 1977 as amended and the UK Bribery Act of 2010) applicable to the Target Group; or
  - (G) have sold or purchased goods or services from, or otherwise engaged in any such transaction with, any person in Cuba, Iran, North Korea, Syria, Sudan or the Crimea Region of Ukraine and no such sales, purchases or other transactions are pending or have any outstanding obligations involving any person in Cuba, Iran, North Korea, Syria, Sudan or the Crimea Region of Ukraine;
- (xi) during the three year period prior to the date of this agreement, no current or former director or officer of any member of the Target Group is or was a Sanctioned Person and, so far as Target is aware, no member of the Target Group or any of their respective current or former employees or their respective intermediaries is or was a Sanctioned Person. For the purposes of this representation, a Sanctioned Person means:
- (A) any person listed in any sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom, Canada, or Australia;
  - (B) any person operating organised or resided in a U.S Sanctioned Country (including Iran, Syria, Sudan, Cuba, North Korea, or the Crimea Region of Ukraine); or
  - (C) any person owned or controlled by any such person.
- (xii) Target's financial statements as disclosed to ASX have been prepared in accordance with AIFRS or IFRS (as applicable) on a basis consistent with past practice financial statements and, so far as Target is aware, there has not been any event, change, effect or development which would require Target to restate its financial statements as disclosed to ASX;
- (xiii) Target has provided all information relating to the expected availability, terms likely to apply to and any material development that would be reasonably likely to



adversely affect any Financial Indebtedness or debt arrangements of the Target Group, from or after the date of this agreement;

- (xiv) Target has provided complete and accurate information regarding fee levels in all retainers and mandates with Advisers and fee estimates for other advisers in relation to the Proposed Transaction, any Competing Proposals as at the date of this agreement and any other transaction where such retainer or mandate is current, or under which the Target Group still has obligations;
- (xv) the Due Diligence Material has been disclosed in good faith and, so far as the Target Board and the senior management of Target are aware after due enquiry, Target has not knowingly or recklessly:
- (A) omitted anything from such information such as to make any part of that information materially false or misleading; or
  - (B) included anything materially false or misleading in such information,
- noting that no warranty or representation, expressed or implied, is given in relation to any forecast, forward looking statement, budget or projection contained or referred to in the Due Diligence Material;
- (xvi) with respect to Material Contracts, so far as Target is aware:
- (A) no member of the Target Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Material Contract;
  - (B) no other party to any Material Contract is in default, or would be in default but for the requirements of notice or lapse of time, under that agreement; or
  - (C) no member of the Target Group has received, or given, any notice of termination of any Material Contract;
- (xvii) as at the date of this agreement, and so far as the Target Board and the senior management of any member of the Target Group are aware after due and diligent inquiry, there are no agreements to which any member of the Target Group is a party which contain any change of control provision that may be triggered by the implementation of the Proposed Transaction (except as otherwise Fairly Disclosed in the Due Diligence Material);
- (xviii) as at the date of this agreement, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to Target or another Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this agreement or under the Scheme; and
- (xix) Target is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this agreement that has or could reasonably be expected to give rise to a Material Adverse Change that has not been Fairly Disclosed in an announcement by Target to ASX or in the Due Diligence Material;
- (xx) all entities within the Target Group have a financial and tax year end date of 30 June; and
- (xxi) so far as the Target is aware, no more than 50% of the fair market value of the Shares as at the Implementation Date will be derived from Australian real property interests; and
- (xxii) the franking account of the Target will not be less than \$21,500,000 of franking credits following payment of the Permitted Dividend.

**9.5 Target's indemnity**

Target agrees with Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the other Bidder Parties) to indemnify and keep indemnified the Bidder Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Bidder may suffer or incur by reason of any breach of any of the Target Warranties.

**9.6 Qualifications on Target's representations, warranties and indemnities**

The representations and warranties in clause 9.4 are each subject to matters that have been Fairly Disclosed in:

- (a) the Due Diligence Material; or
- (b) Target's announcements to ASX, or a publicly available document lodged with ASIC, the PPSR or the public records maintained by any Australian court in relation to Target or a Target Group Member (as applicable), in the 12 month period prior to the date of this agreement; or
- (c) are within the actual knowledge of Bidder as at the date of this agreement, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this agreement:
  - (i) Elise Taylor;
  - (ii) Adam Hassleberg;
  - (iii) Cheong Chin; and
  - (iv) Rob Lister.

**9.7 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 9.

**9.8 Survival of representations**

Each representation and warranty in clauses 9.1 and 9.4:

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

**9.9 Survival of indemnities**

Each indemnity in this agreement (including those in clauses 9.2 and 9.5) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this agreement; and
- (d) survive the termination of this agreement.

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## 10. Releases

### 10.1 Target Parties

- (a) Without limiting Bidder's rights under clause 9, Bidder (for itself and as agent of every member of the Bidder Group) releases all rights against and agrees with Target that it will not make a Claim against, any Target Party (other than Target) in connection with:
- (i) Target's execution or delivery of this agreement;
  - (ii) any breach of any representation, covenant and warranty of Target or any other member of Target Group in this agreement;
  - (iii) the implementation of the Scheme;
  - (iv) any disclosure made by any Target Party including in the Due Diligence Material that contains any statement which is false or misleading whether in content or by omission; or
  - (v) any failure to provide information in connection with the Scheme, whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent the relevant Target Party has engaged in wilful misconduct, wilful concealment or fraud.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Target receives and holds the benefit of this clause as trustee for each other Target Party.

### 10.2 Bidder Parties

- (a) Without limiting Target's rights under clause 9, Target (for itself and as agent of every member of the Target Group) releases its rights against, and agrees with Bidder that it will not make a Claim against any Bidder Party (other than Bidder) in connection with:
- (i) Bidder's execution or delivery of this agreement
  - (ii) any breach of any representation, covenant and warranty of Bidder or any other member of the Bidder Group in this agreement;
  - (iii) the implementation of the Scheme;
  - (iv) any disclosure made by any Bidder Party that contains any statement which is false or misleading whether in content or by omission; or
  - (v) any failure to provide information in connection with the Scheme, whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent that the relevant Bidder Party has engaged in wilful misconduct, wilful concealment or fraud.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

### 10.3 Deeds of indemnity

- (a) Subject to the Scheme becoming Effective, Bidder undertakes in favour of Target and each other person who is a Target Party that it will:
- (i) subject to clause 10.3(d), for 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a

- director or officer of the company to any person other than a member of the Target Group; and
- (ii) procure that Target and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The undertakings contained in clause 10.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
  - (c) Target receives and holds for the benefit of clause 10.3(a), to the extent it relates to the other Target Parties, as trustee for them.
  - (d) The undertakings contained in clause 10.3(a) are given:
    - (i) in the case of clause 10.3(a)(i), until the earlier of 7 years from the Implementation Date or the relevant member of the Target Group ceasing to be part of the Bidder Group; or
    - (ii) in the case of clause 10.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer or the relevant member of the Target Group ceasing to be part of the Bidder Group.

#### 10.4 Directors' and officers' insurance

Bidder acknowledges that:

- (a) Target is contractually obliged to maintain directors and officer insurance until 12 November 2028 (**Policy End Date**) and Target will, up to the Implementation Date, continue to pay all premiums required to ensure that it complies with its existing contractual obligations; and
- (b) Target may, with the prior written consent of Bidder (not to be unreasonably withheld or delayed), in respect of Target and all other members of the Target Group prior to the Implementation Date, enter into the directors' and officers' run-off insurance policy in respect of the directors and officers of any member of the Target Group that applies for the period between the Implementation Date up to the Policy End Date (**Run-off Policy**) on the following basis:
  - (i) the same amount of coverage;
  - (ii) the same deductible or excess; and
  - (iii) otherwise on terms that are equivalent to the current directors or officers of Target for the current financial year but which for the avoidance of doubt may be at a higher premium than the current directors' and officers' insurance policy,

and Bidder will, subject to the Scheme becoming Effective, pay all premiums required prior to the Implementation Date so as to ensure that insurance cover is provided under the Run-Off Policy on those terms until that date.

#### 10.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Target must not:

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

Nothing in clauses 10.4 or 10.5 shall require Bidder or Target to incur any additional premium after the Implementation Date or require Target to not fulfil its contractual obligations under the

Run-Off Policy. Target receives and holds for the benefit of clause 10.3(a) to the extent it relates to the other Target Parties, as trustee for them.

## 11. Confidentiality and announcements

### 11.1 Confidentiality

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

### 11.2 Announcements

- (a) Immediately after the execution of this agreement, or if this agreement is executed after the close of trading, prior to the commencing of trading on the next Business Day, Target must issue its Announcement to the ASX.
- (b) Subject to clause 11.2(c) any further public announcements by either of the parties in relation to, or in connection with the Scheme may only be made in a form approved by the other party in writing (acting reasonably).
- (c) Where a party is required by applicable law, the ASX Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this agreement 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.

### 11.3 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 11.2 apply to any such statements or disclosures.

## 12. Termination

### 12.1 Termination by notice

- (a) Bidder or Target may, by notice in writing to the other, terminate this agreement at any time prior to the Second Court Date:
  - (i) if the other is in material breach of any of its obligations under this agreement (other than the breaching of a party's respective representations and warranties which are regulated by clause 12.2), and the relevant breach is material in the context of the Scheme taken as a whole, and the other party has failed to remedy that breach within 5 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
  - (ii) in accordance with clause 3.7;
  - (iii) if the Court refuses to make any order directing Target to convene the Scheme Meeting, provided that both Target and Bidder have met and consulted in good faith and agreed that they do not wish to proceed with the Scheme; or
  - (iv) if the Effective Date for the Scheme has not occurred on or before the End Date.
- (b) Target may, by notice in writing to Bidder, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then each of that number of

Target Directors as constitutes a majority of the Target Board publicly recommend a Superior Proposal where expressly permitted to do so under this agreement.

- (c) Bidder may, by notice in writing to Target, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then any director of Target:
- (i) fails to recommend the Scheme;
  - (ii) withdraws or adversely revises or adversely modifies his or her recommendation of the Scheme; or
  - (iii) makes a public statement indicating that he or she no longer supports the Scheme or recommends, endorses or supports a Competing Proposal,

other than as a result of the circumstances described in clause 5.2, which for the avoidance of doubt will not extend to any Target Director adversely revising or adversely modifying his or her recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Competing Proposal.

## 12.2 Termination for breach of representations and warranties

- (a) Bidder may, by notice in writing to Target, terminate this agreement at any time prior to the Delivery Time on the Second Court Date, if:
- (i) a Target Warranty is not true and correct; and
  - (ii) where that breach of representation and warranty is material in the context of the Transaction as a whole,

and Target has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Bidder setting out details of the relevant circumstance and requesting Target to remedy the breach.

- (b) Target may, by notice in writing to Bidder, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:
- (i) a Bidder Warranty is not true and correct; and
  - (ii) where that breach of representation and warranty is material in the context of the Transaction as a whole,

and Bidder has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Target setting out details of the relevant circumstance and requesting Bidder to remedy the breach.

## 12.3 Automatic termination

Without limiting any other term of this agreement but subject to clause 3.6, this agreement will terminate automatically if the Scheme is not approved by the necessary majorities at the Scheme Meeting.

## 12.4 Effect of termination

- (a) In the event of termination of this agreement under clause 3.7, 12.1, 12.2 or 12.2, this agreement will become void and have no effect, except that the provisions of clauses 9.8, 9.9, 12, 13, 14 and 19.3 to 19.18 (inclusive) survive termination.
- (b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

## 13. Target Break Fee

### 13.1 Background

- (a) Target and Bidder acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Bidder will incur significant costs including those described in clause 13.2.
- (b) In the circumstances referred to in clause 13.1(a), Bidder has requested that provision be made for the payments outlined in clause 13.3, without which Bidder would not have entered into this agreement.
- (c) The Target Board believes that the Scheme will provide benefit to Target and Target Shareholders and that it is appropriate for Target to agree to the payments referred to in this clause 13 in order to secure Bidder's participation in the Proposed Transaction.
- (d) Target represents and warrants that it has received legal advice on this agreement and the operation of this clause 13, and it considers this clause 13 to be fair and reasonable.

### 13.2 Costs incurred by Bidder

- (a) The fee payable under clause 13.3 has been calculated to reimburse Bidder for the following:
  - (i) fees for legal and financial advice in planning and implementing the Proposed Transaction;
  - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
  - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;
  - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction; and
  - (v) costs associated with the financing arrangements in respect of the Proposed Transaction,in each case, incurred by Bidder directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.
- (b) The parties acknowledge that:
  - (i) the amount of fees, costs and losses referred to in this clause 13.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and
  - (ii) the amount of the costs payable under clause 13.3 is a genuine and reasonable pre-estimate of those fees, costs and losses (it being acknowledged by the parties that the costs would most likely be in excess of this amount).

### 13.3 Payment by Target to Bidder

- (a) Target agrees to pay to Bidder \$110,000 (inclusive of GST) (**Target Break Fee**) in any of the following circumstances:
  - (i) (**Competing Proposal Succeeds**) both of the following occur:
    - (A) a Competing Proposal is publicly announced during the period commencing on the date of this agreement and ending on the End Date; and

- (B) within 9 months from the date of the public announcement of such Competing Proposal (or variation):
  - (I) subject to clause 13.3(b), the Competing Proposal is implemented or completed substantially in the terms described in the public announcement; or
  - (II) a person or persons (other than a member of the Bidder Group) acquires a Relevant Interest or Voting Power in at least 50% of Target Shares or Control of Target or acquires (directly or indirectly) an interest in 50% or more by value the business or assets of the Target Group; or
- (ii) **(Change of Recommendation)** at any time prior to the earlier of the Effective Date and the End Date, any director of Target:
  - (A) withdraws or adversely modifies their recommendation of the Proposed Transaction or recommends or supports a Competing Proposal;
  - (B) does not recommend in the Explanatory Booklet that Target Shareholders approve the Scheme; or
  - (C) makes any public statement to the effect that the Scheme is not, or is no longer, recommended,
 except where that act is:
  - (D) a result of the circumstances set out in clause 5.2, which for the avoidance of doubt will not extend to any Target Director adversely revising or adversely modifying his or her recommendation of the Proposed Transaction or making a public statement indicating that they recommend, endorse or support a Competing Proposal;
  - (E) as a result of the Independent Expert (either in its initial report or any updated, revised or supplemental report) opining that the Scheme is not in the best interest of Target Shareholders (other than where the reason for that opinion is a Competing Proposal); or
  - (F) as a result of any matter of thing giving the Target the right to terminate this agreement under clause 12.1(a)(i); or
- (iii) **(Material Breach)** Bidder terminates this agreement in accordance with clause 12.1(a)(i) or 12.2(a) and the Proposed Transaction does not complete.
- (b) Target is not liable to pay Bidder the Target Break Fee under clause 13.3(a)(i)(B)(I) in circumstances where:
  - (i) an event of the kind described in paragraphs (a)(i) and (ii) of the definition of Competing Proposal has occurred (but other than where this has occurred as a result of an issue of new shares by Target); and
  - (ii) that Competing Proposal does not result in an event of the kind described in paragraphs (a)(iii), (a)(iv), (a)(v), (b) to (c) inclusive of the definition of Competing Proposal occurring.
- (c) Target must pay Bidder the Target Break Fee within 5 Business Days of receipt by Target of a demand for payment from Bidder made after the occurrence of the event referred to in clause 13.3(a).
- (d) The Target Break Fee is not payable 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.



- (e) Notwithstanding any other provision of this agreement, the Target Break Fee is only payable once and the maximum amount payable by Target under this clause 13.3 is the amount of the Target Break Fee.
- (f) Where the Target Break Fee becomes payable to Bidder under this clause 13.3 and is actually paid to Bidder following a demand from the Bidder under clause 13.3(c), Bidder (for itself and as agent of every member of the Bidder Group):
- (i) releases all rights against and agrees with Target that Bidder will not make a Claim against any Target Party (other than a claim under this clause 13.3) in connection with:
    - (A) the event that gave rise to the right to demand the payment of the Target Break Fee; nor
    - (B) any other event, matter or circumstance that may give rise to a separate right to the Target Break Fee or that constitutes or may constitute a breach of this agreement; and
  - (ii) indemnifies any Target Party against a Claim that is made contrary to the release under clause 13.3(f)(i),  
with the effect that the payment of the Target Break Fee represents the sole and exclusive liability of any Bidder Group Member.
- (g) The Target Break Fee is not payable where Target has become entitled to the Bidder Break Fee.
- (h) Bidder's right to receive the Target Break Fee shall not limit or otherwise affect Bidder's right to seek specific performance, injunctive relief or any other remedies that would otherwise be available in equity or law as a remedy for a breach or threatened breach of this agreement by Target, provided that in no event shall Bidder be entitled to receive both specific performance and payment of the Target Break Fee.

## 14. Bidder Break Fee

### 14.1 Bidder Break Fee

- (a) Bidder agrees to pay to Target \$110,000 (inclusive of GST) (**Bidder Break Fee**) if:
- (i) the Target terminates this agreement in accordance with clause 12.1(a)(i) or 12.2(b); or
  - (ii) Bidder does not pay the Scheme Consideration in accordance with the terms and conditions of this agreement and the Deed Poll and such breach is not remedied within 5 Business Days of written notice from Target to Bidder or such other later date as agreed by the parties.
- (b) Bidder must pay Target the Bidder Break Fee within 5 Business Days of receipt by Bidder of a demand for payment from Target made after the occurrence of the event referred to in clause 14.1(a) unless in relation to an event referred to in clause 14.1(a)(ii), the Bidder has made an application to the Court to amend the Scheme to allow for an extension of the time for payment of the Scheme Consideration, in which case the time for payment of the Bidder Break Fee will be as determined by the Court.
- (c) The maximum aggregate amount which Bidder is required to pay in relation to a breach of this agreement by Bidder is the Bidder Break Fee, and in no event will the aggregate liability of Bidder under or in connection with a breach of this agreement exceed the Bidder Break Fee.

- For personal use only
- (d) Notwithstanding any other provision of this agreement, the Bidder Break Fee is only payable once and the maximum amount payable by Bidder under clause 14.1(a) is the amount of the Bidder Break Fee.
  - (e) The Bidder Break Fee is not payable where Bidder has become entitled to the Target Break Fee.
  - (f) The Bidder Break Fee is not payable if the Scheme becomes Effective and proceeds to be implemented. In those circumstances, if any amount of the Bidder Break Fee has already been paid under clause 14.1(a), it must be refunded by Target to Bidder.
  - (g) Where the Bidder Break Fee becomes payable to Target under this clause 14.1 and is actually paid to Target following a demand from the Target under clause 14.1(b), Target (for itself and as agent of every member of the Target Group):
    - (i) releases all rights against and agrees with Bidder that Target will not make a Claim against any Bidder Party (other than a claim under this clause 14.1) in connection with:
      - (A) the event that gave rise to the right to demand the payment of the Bidder Break Fee; nor
      - (B) any other event, matter or circumstance that may give rise to a separate right to the Bidder Break Fee or that constitutes or may constitute a breach of this agreement; and
    - (ii) indemnifies any Bidder Party against a Claim that is made contrary to the release under clause 14.1(g)(i),  
with the effect that the payment of the Bidder Break Fee represents the sole and exclusive liability of any Target Group Member.
  - (h) Target's right to receive the Bidder Break Fee shall not limit or otherwise affect Target's right to seek specific performance, injunctive relief or any other remedies that would otherwise be available in equity or law as a remedy for a breach or threatened breach of this agreement by Bidder, provided that in no event shall Target be entitled to receive both specific performance and payment of the Bidder Break Fee.
  - (i) Nothing in clause 14.1(g) limits the liability of Bidder in connection with the Deed Poll or the obligations under clause 4.2(b). Any amounts paid or payable by Bidder in respect of any such obligation shall be disregarded for the purposes of clause 14.1(c).

## 15. Exclusivity

### 15.1 No existing discussions

Other than in relation to the discussions with Bidder in connection with the Proposed Transaction, Target represents and warrants to Bidder that, as at the date of this agreement it and its Related Bodies Corporate:

- (a) is not a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal;
- (b) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communication, with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal;
- (c) has ceased to provide or make available any non-public information in relation to the Target Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal; and

- (d) has requested in writing (or will do so within 5 Business Days) the return or destruction of any non-public information (with such return or destruction to be effected as soon as practicable) in relation to the Target Group provided to a Third Party at any time within the 12 months prior to the date of this agreement where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal.

## 15.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of Bidder, Target must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal;
- (b) solicit, invite, encourage or initiate any enquiries, proposals, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal; or
- (c) communicate any intention to do any of those things.

## 15.3 No talk restriction

Subject to clause 15.5, during the Exclusivity Period, Target must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, (whether directly or indirectly):

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
- (b) communicate any intention to do any of these things, in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:
  - (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Related Bodies Corporate; or
  - (d) that person has publicly announced the Competing Proposal.

## 15.4 No due diligence

- (a) During the Exclusivity Period, except with the prior written consent of Bidder, Target must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:
  - (i) (A) solicit, invite, initiate, or encourage, or (B) (subject to clause 15.5) facilitate or permit, any person (other than Bidder) to undertake due diligence investigations in respect of Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
  - (ii) subject to clause 15.5, make available to any person (other than Bidder) or permit any such person to receive any non-public information relating to Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) If Target proposes that any non-public information be provided to a Third Party in reliance on clause 15.5, then:
  - (i) before Target provides such information, the Third Party must enter into a confidentiality agreement which contains confidentiality obligations on the recipient of that information which are no less onerous in any material respect than the obligations of Bidder and Target under the Confidentiality Agreement; and

- (ii) any non-public information provided to that Third Party must also be provided to Bidder (unless the information has already been provided to Bidder or an Authorised Person).

## 15.5 Exceptions

Clauses 15.3, 15.4(a)(i)(B), 15.4(a)(ii) and 15.7(b)(i) do not prohibit any action or inaction by Target in relation to a bona fide Competing Proposal provided that the Target Board, acting in good faith, and after receiving written advice from its financial advisers and reputable external Australian legal advisers specialising in the area of corporate law, has determined that:

- (a) the Competing Proposal is a Superior Proposal or may reasonably be expected to lead to a Superior Proposal; and
- (b) failing to take or not take such action (as the case may be) with respect to the Competing Proposal would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties of the Target Board,

provided that the Competing Proposal was not brought about by, or in respect of which there has not been, a breach of clause 15.2.

## 15.6 Target warranty and undertakings

- (a) Target warrants as at the date of this agreement:
  - (i) that it has, and its Authorised Persons have, ceased any existing discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
  - (ii) that it has requested the return of Target's confidential information in accordance with the terms of any relevant confidentiality agreement from all third parties conducting due diligence investigations on the Target Group prior to the date of this agreement.
- (b) During the Exclusivity Period, Target must:
  - (i) diligently enforce all its rights under each confidentiality agreement entered into in connection with a Competing Proposal (before the date of this agreement), including any standstill obligations and its rights to require the return of confidential information as referred to in clause 15.6(a)(ii), and keep Bidder fully informed of its progress in doing so;
  - (ii) as soon as reasonably practicable, ensure that the electronic data room access granted to any third party prior to the date of this agreement in connection with a Competing Proposal is withdrawn; and
  - (iii) not grant any waivers or agree to any amendments under any confidentiality agreements entered into in connection with a Competing Proposal (before the date of this agreement).

## 15.7 Notice of Competing Proposal

- (a) During the Exclusivity Period, Target must promptly (and in any event, within 48 hours) notify Bidder in writing of:
  - (i) any approach, inquiry or proposal made by any person to Target, any of its Related Bodies Corporate or any of their respective Authorised Persons that could reasonably be expected to lead to, a Competing Proposal; and
  - (ii) any request made by any person to Target, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Competing Proposal,

**(Competing Proposal Notice).**

- (b) A Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):
- (i) subject to clause 15.5, the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 15.7(a)(i) or who made the relevant request for information referred to in clause 15.7(a)(ii); and
  - (ii) the material terms and conditions (including price, form of consideration, proposed deal protection provisions, financing, conditions precedent, timetable and any break or reimbursement fee) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) If Target gives Bidder a Competing Proposal Notice, Bidder agrees that the notice will be Confidential Information of Target (as defined in the Confidentiality Agreement).

**15.8 Target's response to Competing Proposal and Bidder's right to respond**

- (a) If Target receives a Competing Proposal and as a result, any Target Director proposes to either:
- (i) change, withdraw or modify his or her Recommendation or Voting Intention; or
  - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal with the person who has made the applicable Competing Proposal (**Rival Acquirer**) (other than an Acceptable Confidentiality Agreement),

Target must ensure that no Target Director does so:

- (iii) unless the Competing Proposal is bona fide; and
  - (iv) until each of the following has occurred:
    - (A) the Target Directors have made the determination contemplated by clause 15.8(a)(ii) in respect of that Competing Proposal;
    - (B) Target has given Bidder written notice (**Relevant Notice**) of the Target Director's proposal to take the action referred to in clauses 15.8(a)(i) or 15.8(a)(ii) (subject to Bidder's rights under clause 15.8(b)), including details of the grounds on which the Target Directors propose to take such action;
    - (C) Target has given Bidder all information that would be required by clause 15.7(b);
    - (D) Bidder's rights under clause 15.8(b) have been exhausted; and
    - (E) the Target Directors have made the determination contemplated by clause 15.5 in respect of that Competing Proposal after Bidder's rights under clause 15.8(b) have been exhausted and after evaluation of any Counter Proposal.
- (b) If Target gives a Relevant Notice to Bidder under clause 15.8(a)(iv)(B), Bidder will have the right, but not the obligation, at any time during the 5 Business Days following the receipt of the Relevant Notice, to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (each a **Counter Proposal**), and if it does so then the Target Directors must review the Counter Proposal in good faith. If the Target Directors determine that the Counter Proposal would be more favourable, or at least no less favourable, to Target and the Target Shareholders than the Competing Proposal, then Target and Bidder must use their best endeavours to agree the amendments to this

agreement that are reasonably necessary to reflect the Counter Proposal, and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Target must use its best endeavours to procure that the Target Directors recommend the Counter Proposal to the Shareholders and not recommend the applicable Competing Proposal.

- (c) For the purposes of this clause 15.8, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

## 15.9 Disclosure of Competing Proposal

Despite clauses 15.7 and 15.8, to the extent required to discharge what they have determined in good faith to be their fiduciary or statutory obligations, the Target Board may release a public announcement acknowledging receipt of a Competing Proposal and:

- (a) recommending that Target Shareholders take no action in relation to the Competing Proposal; and
- (b) reserving the Target Board's position in relation to the recommendation of the Scheme, provided that such announcement does not disclose the person from whom the Competing Proposal has been received nor any of the material terms of the Competing Proposal, including the price.

## 16. Modification of Target Break Fee or exclusivity arrangements

### 16.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clause 13 or an exclusivity arrangement under clause 15 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel by a third party, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Target Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 15, it will make a declaration of unacceptable circumstances,

then, subject to clause 16.2:

- (c) the parties must amend clause 13 and/or 15 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 16.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clauses 16.1(a) or 16.1(b) nor the amendment of clause 13 and/or 15 will be taken to be a breach of, or permit any party to terminate, this agreement.

The parties must not make or cause or permit to be made, any application to a Governmental Agency or the Takeovers Panel for or in relation to a determination in this clause 16.1 only.

## 16.2 No requirement to act unless decision final

The parties are only required to take steps under 16.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) Bidder and Target agree in writing not to appeal or seek review of the decision to impose that requirement.

## 16.3 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clauses 16.1(a) or 16.1(b). If either Bidder and Target wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review made by the first party.

## 16.4 Determination by Governmental Agency

If a Governmental Agency determines that payment of all or any part of the Target Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Target Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of Target to pay the Target Break Fee does not apply to the extent of the Impugned Amount; and
- (b) if Bidder has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

## 17. Withholding tax

- (a) If Bidder is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**)) or by any Governmental Agency in respect of the acquisition of Scheme Shares from the Scheme Shareholders, Bidder (subject to clauses 17(b) and 17(c)):
  - (i) must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Governmental Agency under applicable law; and
  - (ii) will not be required to pay any additional amount and will be deemed for all purposes to have paid the full amount of the Scheme Consideration (or other payment) required under this agreement.
- (b) Bidder acknowledges and agrees that it will not withhold or deduct any Subdivision 14-D amounts under clause 17(a) with respect to a Scheme Shareholder where:
  - (i) a Scheme Shareholder holds less than a 10% of the issued shares of Target (on an associate inclusive basis); or
  - (ii) Bidder has no knowledge or reasonable belief that a particular Scheme Shareholder is a foreign resident; or

- (iii) Bidder receives a declaration in accordance with the requirements of section 14-225 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) that covers, at least, the period between (and including) the date of this agreement and the Implementation Date (**Scheme Shareholder Declaration**) from the Scheme Shareholder prior to the Implementation Date and does not know the Scheme Shareholder Declaration to be false.
- (c) Where:
- (i) Bidder either:
- (A) knows that a particular Scheme Shareholder is not, or reasonably believes that a particular Scheme Shareholder is not, an Australian resident; or
- (B) does not reasonably believe that a particular Scheme Shareholder is an Australian resident and either has an address outside of Australia or directs Bidder to pay some or all of the Scheme Consideration to a place outside of Australia; and
- (ii) that Scheme Shareholder holds more than 10% of the issued shares of Target (on an associate inclusive basis),
- Bidder can withhold in accordance with clause 17(a) if required to do so.
- (d) Target agrees that Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance that Bidder reasonably requires in making any such approach. Bidder agrees:
- (i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office; and
- (ii) not to contact any Scheme Shareholders in connection with the application of Subdivision 14-D to the Scheme without Target's prior written consent, such consent not to be unreasonably withheld.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following any process described in clause 17(b). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this agreement, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders

## 18. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be sent to the address for service of the addressee specified in the Details;
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with the Details; and
- (e) will be deemed to be received by the addressee, unless the time for delivery required by this agreement is before 9.00am or after 5.00pm on a Business Day:
- (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia; and



- (ii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.
- (iii) **(in the case of email)** immediately after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

## 19. General

### 19.1 Further acts

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

### 19.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties.

### 19.3 Payments

Unless otherwise provided in this agreement, where an amount is required to be paid to a party (**Receiving Party**) by another party under this agreement, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

### 19.4 Interest

- (a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 19.4(a):
  - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
  - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

### 19.5 GST

- (a) Any reference in this clause 19.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for

the application of this clause 19.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 19.5(c) does not apply to any taxable supply under or in connection with this agreement that is stated to include GST.

- (d) The amount on account of GST payable in accordance with this clause 19.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) If an amount on account of GST is payable under clause 19.5(c), the Supplier must provide the Recipient with a tax invoice before such amount is payable.
- (f) If the GST payable in relation to a supply varies from the GST amount paid by the Recipient under clause 19.5(c), the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation from the Recipient provided that the Supplier provides an adjustment note to the Recipient where there is an adjustment event. Any payment, credit or refund under this clause 19.5(f) is deemed to be a payment, credit or refund of the GST payable under clause 19.5(c).
- (g) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

#### **19.6 Stamp duty**

Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this agreement or the Scheme or the steps to be taken under this agreement or the Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Scheme).

#### **19.7 Expenses**

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement and the Explanatory Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.

#### **19.8 Amendments**

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

#### **19.9 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

#### **19.10 Business Day**

Except where otherwise expressly provided, where under this agreement the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the next Business Day.

#### **19.11 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by

any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.

- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.
- (d) Nothing in this agreement obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.

#### **19.12 Counterparts**

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This agreement is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine to the facsimile number of the other party specified in clause 18, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

#### **19.13 Electronic execution**

Each party consents to the signing of this agreement by electronic means. The parties agree to be legally bound by this deed signed in this way.

#### **19.14 Electronic exchange of documents**

In relation to the electronic exchange of documents:

- (a) parties may exchange executed counterparts of this document, or any other document required to be executed under this document, by delivery from one party to the other party by emailing a pdf (portable document format) copy of the executed counterpart to that other party (**Electronic Delivery**); and
- (b) Electronic Delivery of an executed counterpart will be deemed effective delivery of the original executed counterpart, from the date and time of receipt by the other party.

#### **19.15 Entire agreement**

- (a) This agreement and any other documents specified by the parties for the purposes of this clause 19.15:
  - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
  - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 19.15(a), the Confidentiality Agreement continues to apply to the parties to that agreement in accordance with its terms, except to the extent of any express inconsistency, in which case this agreement prevails.

#### **19.16 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements set out in this agreement.

- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement set out in this agreement.

**19.17 No merger**

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

**19.18 Governing law**

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

# Schedule 1 - Indicative timetable

[Not reproduced here. Refer to ASX announcement dated 15 March 2023 for indicative timing. Await Scheme Booklet for updated indicative timing]

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# Schedule 2 - Deed Poll

[Not reproduced here. Await Scheme Booklet]

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# Schedule 3 – Scheme

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# Signing page

**EXECUTED** as an agreement.

**Executed by Vita Group Limited** in accordance with Section 127 of the *Corporations Act 2001* (Cth)



Signature of director

**Paul Alexander Mirabelle**

Name of director (print)



Signature of director/company secretary  
(Please delete as applicable)

**George Edward James Southgate**

Name of director/company secretary (print)

*By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.*

**Executed by Practice Management Pty Ltd** in accordance with Section 127 of the *Corporations Act 2001* (Cth)

Signature of director

Signature of director/company secretary  
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

*By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.*

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\_\_\_\_\_

Signature of director

\_\_\_\_\_

Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_

Name of director (print)

\_\_\_\_\_

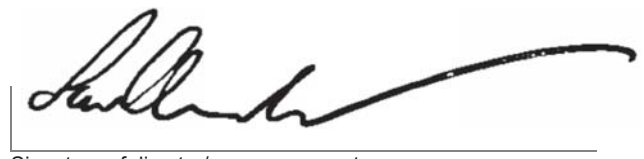
Name of director/company secretary (print)

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**Executed by Practice Management Pty Ltd** in accordance with Section 127 of the *Corporations Act 2001* (Cth)



Signature of director



Signature of director/company secretary  
(Please delete as applicable)

Chris Wilks

Name of director (print)

Paul Alexander

Name of director/company secretary (print)

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