

28 March 2023

## United Malt enters into Process Deed following Indicative Proposal from Malteries Soufflet

United Malt Group Limited (ASX:UMG) (**United Malt**) announces that it has entered into a process and exclusivity deed (**Process Deed**) with Malteries Soufflet SAS (**Malteries Soufflet**), following Malteries Soufflet submitting a conditional, non-binding and indicative proposal to acquire all of the ordinary shares on issue in United Malt (**United Malt Shares**) for \$5.00 (**Indicative Proposal Price**) in cash per United Malt Share by way of a members' scheme of arrangement (**Potential Transaction**) (**Indicative Proposal**). Malteries Soufflet is registered in France and, as advised by Malteries Soufflet, is the largest commercial maltster in Europe and the second largest maltster globally.

The Indicative Proposal states that the Indicative Proposal Price will be adjusted for any dividend declared or paid by United Malt to the holders of United Malt Shares (**United Malt Shareholders**) before implementation of the Potential Transaction. The Indicative Proposal is subject to a number of conditions, which are summarised in Appendix A.

The Indicative Proposal of \$5.00 in cash per United Malt Share represents a:

- 45.3% premium to the last closing price of United Malt Shares on the ASX of \$3.44 (as at 24 March 2023);
- 48.6% premium to the 1-month volume weighted average price (**VWAP**) of United Malt Shares of \$3.37 (as at 24 March 2023);
- 42.0% premium to the 3-month VWAP of United Malt Shares of \$3.52 (as at 24 March 2023); and
- 51.3% premium to the 6-month VWAP of United Malt Shares of \$3.30 (as at 24 March 2023).

### History of engagement with Malteries Soufflet

The Indicative Proposal follows an unsolicited approach from Malteries Soufflet and its major shareholder, the InVivo Group (**InVivo**), to United Malt regarding a potential combination of United Malt and Malteries Soufflet. After a period of preliminary engagement, the United Malt Board determined that it was in the best interests of United Malt Shareholders to provide limited non-public information about United Malt to Malteries Soufflet and InVivo on a confidential and non-exclusive basis.

Following the provision of this information, Malteries Soufflet submitted several confidential, non-binding and indicative proposals to acquire 100% of United Malt Shares: On 16 December 2022, for \$4.15 in cash per share; on 6 February 2023, for \$4.50 in cash per share; on 8 March 2023, for \$4.90 in cash per share; and on 14 March 2023, Malteries Soufflet submitted the Indicative Proposal at the Indicative Proposal Price of \$5.00 in cash per share.

### Next steps for the Indicative Proposal

After careful consideration of the Indicative Proposal (including consultation with its financial and legal advisers), the United Malt Board unanimously determined that it is in the best interests of United Malt Shareholders as a whole for United Malt to engage with and provide due diligence access to Malteries Soufflet to assist it to provide a binding proposal in respect of the Potential Transaction to the United Malt Board.

In the Indicative Proposal, Malteries Soufflet stated that it would only be willing to progress the Indicative Proposal (at the improved Indicative Proposal Price) if United Malt agreed to certain exclusivity restrictions. Accordingly, United Malt has entered into the Process Deed with Malteries Soufflet. Under the Process Deed, United Malt has granted Malteries Soufflet the opportunity to conduct due diligence on an exclusive basis for a period commencing on the date of the Process Deed and ending 10 weeks from the time that is 48 hours after the due diligence information requested by Malteries Soufflet has been substantially provided (**Exclusivity Period**). Under the Process Deed, United Malt must use its reasonable endeavours to provide this information to Malteries Soufflet in a virtual data room within two weeks after the date of the Process Deed. Under the Process Deed, United Malt and Malteries Soufflet have also agreed to work cooperatively towards entry into a scheme implementation agreement.

Under the Process Deed, United Malt has agreed to certain customary exclusivity restrictions, including “no shop”, “no talk”, “no due diligence” and “notification” obligations that apply during the Exclusivity Period. The Process Deed also includes a “matching right” regime in respect of any Superior Proposal<sup>1</sup> received by United Malt during the Exclusivity Period. A customary fiduciary exception applies to United Malt’s “no talk” and “no due diligence” obligations, but only from the date that is four weeks after the commencement of the Exclusivity Period. In addition to these exclusivity obligations, under the Process Deed United Malt has agreed to reimburse Malteries Soufflet for certain costs that Malteries Soufflet incurs in connection with the Potential Transaction (including in undertaking its due diligence investigations and negotiating the scheme implementation agreement), up to a maximum of \$5.0 million, in certain circumstances. These circumstances include where (i) Malteries Soufflet provides a fully documented, financed and binding offer (in the form of an executed scheme implementation agreement that has been negotiated in good faith with United Malt and reflects the terms of the Indicative Proposal, together with other required documentation) in the 10 business day period after the end of the Exclusivity Period and United Malt elects not to proceed with the Potential Transaction, or (ii) United Malt enters into an agreement to give effect to a competing proposal, or the United Malt Board recommends a competing takeover bid, during the Exclusivity Period. A copy of the Process Deed is attached to this announcement as Appendix B.

If Malteries Soufflet provides a binding proposal in respect of the Potential Transaction (at a price per United Malt Share of no less than the Indicative Proposal Price), subject to the entry into a binding scheme implementation agreement in a form acceptable to the United Malt Board, the United Malt Board intends to unanimously recommend that United Malt Shareholders vote in favour of the Potential Transaction (in the absence of a superior proposal and subject to an independent expert concluding, and continuing to conclude, that the Potential Transaction is in the best interests of United Malt Shareholders).

United Malt Shareholders do not need to take any action in relation to the Indicative Proposal or the Potential Transaction. United Malt will continue to keep United Malt Shareholders informed about the Indicative Proposal in accordance with its continuous disclosure obligations. United Malt notes that there is no certainty that the provision of due diligence access to Malteries Soufflet or the performance of United Malt’s obligations under the Process Deed will result in Malteries Soufflet providing a binding proposal to the United Malt Board that is capable of being recommended to United Malt Shareholders or the entry into a binding scheme implementation agreement, or that the Potential Transaction (or any other transaction in relation to United Malt and Malteries Soufflet and / or InVivo) will proceed.

United Malt has appointed Macquarie Capital as its financial adviser, and Gilbert + Tobin as its legal adviser, in relation to the Potential Transaction.

This announcement was authorised by the United Malt Board.

### **Additional information**

For further information regarding this announcement, please contact:

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### **About United Malt Group**

United Malt is a leading global maltster, with approximately 1.3Mtpa of capacity across 12 processing plants in Canada, United States of America, Australia and the United Kingdom. We also operate an international distribution business, which provides a full service offering for craft brewers and distillers, including malt, hops, yeast, adjuncts and related products.

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<sup>1</sup> As defined in the Process Deed.

## Appendix A: Summary of Indicative Proposal conditions

The Indicative Proposal states that:

- a) the submission of a binding proposal by Malteries Soufflet in respect of the Potential Transaction is subject to the satisfactory completion of Malteries Soufflet's due diligence in respect of United Malt (Malteries Soufflet requested that United Malt grant it exclusivity while it undertakes this due diligence), consultation with Malteries Soufflet's works council (as required under French law), and the final approval of Malteries Soufflet's board of directors and the board and/or investment committees (as applicable) of Malteries Soufflet's shareholders, being InVivo, KKR, Bpifrance and Crédit Agricole; and
- b) the implementation of the Potential Transaction:
  - i. is expected to be subject to antitrust approvals and other regulatory approvals, including Australian Foreign Investment Review Board (FIRB) approval; and
  - ii. will be subject to the entry by United Malt and Malteries Soufflet into a scheme implementation deed containing customary terms and conditions, including, but not limited to, a requirement for the United Malt Board to unanimously recommend that United Malt Shareholders vote in favour of the Potential Transaction (in the absence of a superior proposal and subject to an independent expert concluding that the Potential Transaction is in the best interests of United Malt Shareholders).

**Appendix B: Copy of Process Deed**

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Malteries Soufflet  
United Malt Group Limited

## Process and Exclusivity Deed

Execution Version

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5 Spring Street  
Perth WA 6000 Australia  
T +61 8 9488 3700  
F +61 8 9488 3701  
[www.allens.com.au](http://www.allens.com.au)

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This Deed is made on

27 March

2023

**Parties**

- 1 **Malteries Soufflet** (562 880 195 RCS Troyes) of Quai du Général Sarrail, 10400 Nogent-sur-Seine, France (**Bidder**).
- 2 **United Malt Group Limited** (ABN 61 140 174 189) of Citigroup Centre, L18, Suite C, 2 Park Street Sydney, NSW 2000 (**Target**).

**Recitals**

- A Bidder has submitted the Indicative Offer Letter to Target and Target has agreed, on the basis of the Indicative Offer Letter, to facilitate further negotiations in relation to the Proposal and due diligence in relation to Target on the terms and conditions of this Deed.
- B The parties have agreed to enter into this Deed to record the terms on which they and their respective Representatives will conduct themselves during the Exclusivity Period and for the purposes of facilitating the further due diligence enquiries necessary for Bidder to determine whether to carry out the Proposal.

**It is agreed** as follows.**1 Definitions and Interpretation****1.1 Definitions**

The following definitions apply (including in the Recitals) unless the context requires otherwise.

**Acceptable Form** means, in relation to the Scheme Implementation Agreement:

- (a) a Scheme Implementation Agreement in a form that has been agreed between the parties through the process described in clause 5; or
- (b) if the parties have failed to reach agreement on the Scheme Implementation Agreement as a result of a failure by Target to comply with its obligations under clause 5 (in circumstances where Bidder has complied with its obligations thereunder), a Scheme Implementation Agreement in such form as Bidder determines provided that it reflects the material terms of the Proposal (including in respect of form of consideration and price, such that, under the Scheme Implementation Agreement, Bidder will acquire all of the Target Shares on issue for at least \$5.00 per Target Share (as adjusted for distributions made by Target as expressly stated in the Indicative Offer Letter) in cash) and, in all other respects, Bidder can demonstrate by reference to market practice in Australia, reflects a standard market position on matters ordinarily addressed in a scheme implementation agreement for a transaction such as the Potential Transaction.

**Affiliate Fund** means each trust, partnership, fund, equity investor, co-investor, other investment vehicle and investment mandate from time to time managed or advised by the person or Related Entity of the person.

**Agreed Costs** means the amount of Bidder's actual costs (including costs of external advisers (other than Bidder's (and its Representatives') financial advisers) but excluding internal management time) incurred in its preparation, planning, investigation and negotiation of the Proposal from 17 March 2023 and the consideration, planning and preparation of Regulatory Approval Applications (but excluding any application or filing fees imposed or charged by a Government Agency in connection with any Regulatory Approval Applications) (as evidenced by copies of the invoices (redacted for commercially or competitively sensitive information or



privileged information) from the applicable third party advisers provided by Bidder to Target before the Costs Payment Date, which the parties agree will constitute irrebuttable evidence of such costs being duly and properly incurred for the applicable purpose), up to a maximum of A\$5.0 million.

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

**ASX** means ASX Limited (ACN 008 624 691).

**Bidder Counterproposal** means has the meaning given in clause 7.7(b).

**Bidder Investigations** has the meaning given in clause 4.1(a).

**Business Day** means a day other than a Saturday, Sunday, public or bank holiday in Sydney, Australia or in Paris, France.

**Clean Team Protocol** means the clean team protocol executed on 8 February 2022, as amended from time to time.

**Competing Proposal** means any proposal, agreement, arrangement, offer (including, but not limited to, a non-binding, indicative offer or proposal) or transaction (whether existing on, during, or after the date of this Deed) which, if completed substantially in accordance with its terms, would result in a Third Party (either alone or with any Associate(s)):

- (a) directly or indirectly acquiring, or having a right to acquire, a Relevant Interest in more than 20% of the Target Shares on issue (on a fully diluted basis);
- (b) acquiring Control of the Target;
- (c) directly or indirectly acquiring or becoming the holder of a legal, beneficial or economic interest in, or Control of, more than 20% of:
  - (i) the Target's business or assets; or
  - (ii) the Target Group's business or assets; or
- (d) requiring the Target to abandon, or to otherwise not proceed with, the Proposal or the Potential Transaction or requiring any Target Director to not recommend the Potential Transaction,

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

**Confidentiality Agreement** means the Confidentiality Agreement between Bidder and Target dated 23 December 2021, as amended by agreement dated on or about the date of this Deed, and otherwise as amended from time to time.

**Confidential Information** has the meaning given in the Confidentiality Agreement.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

**Costs Payment Date** means the date that is 10 Business Days following the expiry of the Exclusivity Period.

**Data Room Material** has the meaning given in clause 4.1(d).

**Data Room Open Date** means the date that is 48 hours after the date on which Target gives Bidder a notice under clause 4.1(d) and all Representatives of Bidder nominated by Bidder in

writing to Target before the date of that notice have been granted access to the Virtual Data Room.

**Due Diligence Request List** means the list of due diligence enquiries proposed to be undertaken by Bidder as part of the Bidder Investigations and set out in the document headed Due Diligence Request List, which is confirmed as being the "Due Diligence Request List" referred to in this Deed by way of email exchange between Target's and Bidder's legal or financial advisers at or before the time of execution of this Deed.

**Exclusivity Period** means the period commencing on the date of this Deed and ending at 5.00pm (Sydney time) on the date that falls 10 weeks after the later of:

- (a) the Data Room Open Date; and
- (b) the date of this Deed.

**Government 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 (including, for the avoidance of doubt, the Commonwealth Treasurer), the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission (**ACCC**), the Australian Taxation Office, ASX and any regulatory organisation established under statute or any stock exchange.

**Indicative Offer Letter** means the confidential and non-binding indicative offer letter from the Bidder to Target in relation to the Proposal dated 14 March 2023.

**Potential Transaction** means a transaction (on the terms and conditions set out in the Indicative Offer Letter, including in respect of form of consideration and price, such that Bidder will acquire all of the Target Shares on issue for at least \$5.00 per Target Share, as adjusted for distributions made by Target as expressly stated in the Indicative Offer Letter) to be implemented by way of a members' scheme of arrangement that the Target Board publicly recommends to Target Shareholders (in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Potential Transaction is in the best interests of Target Shareholders) when the entry into the Scheme Implementation Agreement is first announced by Target.

**Proposal** means the proposal under which Bidder, or a Related Entity of Bidder, will acquire all of the Target Shares pursuant to the Potential Transaction, the terms and conditions of which are set out (or incorporated by reference into) the Indicative Offer Letter.

**Purpose** has the meaning given in clause 4.1(a).

**Regulated Event** means the occurrence of any of the following:

- (a) a member of the Target Group issuing (or agreeing to issue) shares or options or other securities convertible into shares, other than (in the case of a member of the Target Group other than the Target) an issue to (or agreement to issue to) another member of the Target Group or an issue of shares upon the exercise of options or convertible securities (including, but not limited to, performance and other share rights) existing as at the date of this Deed;
- (b) Target resolving to reduce its share capital in any way, or entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (c) Target converting all or any of its shares into a larger or smaller number of shares;

- (d) Target announcing, making, declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (whether in cash or in specie) (other than a cash distribution that is consistent with Target's stated dividend or distribution policy, as most recently announced to the ASX before the date of this Deed);
- (e) a member of the Target Group acquiring or disposing of, or entering into or announcing any agreement for the acquisition or disposal of, any asset or business, or entering into any corporate transaction, which would or would reasonably be likely to involve a material change in:
- (i) the manner in which the Target Group conducts its business;
  - (ii) the nature (including balance sheet classification), extent or value of the assets of the Target Group; or
  - (iii) the nature (including balance sheet classification), extent or value of the liabilities of the Target Group;
- (f) a member of the Target Group commencing business activities that are not in the ordinary course of the Target Group's maltster business and not already carried out as at the date of this Deed, whether by way of acquisition or otherwise; or
- (g) Target Board exercising any discretion to accelerate the vesting of any shares, options or other securities given to the Target Board under any existing share plan, performance plan or any other short term or long term incentive schemes (excluding, for the avoidance of doubt, any vesting (i) in the ordinary course, consistent with past practice and in accordance with the terms of such plans or schemes as at the date of this Deed or (ii) otherwise in accordance with the terms of issue of the relevant shares, options or securities).

**Regulatory Approval Applications** means each application or notification Bidder considers (acting reasonably and in good faith) is, or may be, necessary to submit for any approval from, or notification to, any Government Agency required by Bidder or any of its Related Entities or their direct or indirect shareholders or investors in connection with the Proposal (or the Potential Transaction), including (without limitation) any notification under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), any foreign direct investment approval required under the laws of any jurisdiction, and any anti-trust filings or approvals (or equivalent) in any applicable jurisdiction.

**Related Entity** means, in relation to an entity (the **first entity**):

- (a) a subsidiary of the first entity;
- (b) an entity of which the first entity is a subsidiary; or
- (c) a subsidiary of another entity of which the first entity is also a subsidiary,

where, for the purposes of this definition, **subsidiary** has the meaning given in the Corporations Act, but an entity will also be taken to be a subsidiary of an entity if it is Controlled by that entity and:

- (d) a trust may be a subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share; and
- (e) an entity may be a subsidiary of a trust if it would have been a subsidiary if that trust were a body corporate.

In relation to Bidder, a Related Entity includes any shareholder of Bidder (or any entity of which Bidder is a subsidiary or that Controls Bidder).

**Relevant Interest** has the meaning given to that term by section 9 of the Corporations Act.

**Representative** of a party means:

- (a) any Related Entity of the party; and
- (b) any:
  - (i) director, officer or employee; or
  - (ii) professional adviser (including industry, technical or commercial consultant, financial adviser, legal adviser or accountant),

of the party or any of its Related Entities.

**RFI Process** means the question and answer functionality made available to Bidder and its Representatives in the Virtual Data Room.

**Restricted Related Entities** means a Related Entity of Bidder but, for the avoidance of doubt, excludes:

- (a) any investee or portfolio entity of any such Related Entity (being a business in which the Related Entity or any of its Affiliate Funds invest in the ordinary course of its private equity investment operations) that are not provided, and do not obtain access to, Confidential Information and are not acting, directly or indirectly, on behalf, or at the direction or instruction of, or in concert with, Bidder or a Representative of Bidder that is in possession of Confidential Information in connection with the Potential Transaction or the Proposal; or
- (b) any Affiliate Fund of such Related Entity that is not provided, and do not obtain access to, Confidential Information and is not acting, directly or indirectly, on behalf, or at the direction or instruction of, or in concert with, Bidder or a Representative of Bidder that is in possession of Confidential Information in connection with the Potential Transaction or the Proposal.

**Scheme Implementation Agreement** means the scheme implementation agreement to be entered into by Bidder (or a Related Entity) and Target in relation to the implementation of the Potential Transaction.

**Substantial Holding** has the meaning given in section 9 of the Corporations Act.

**Substantial Target Shareholder** means any person who has a Substantial Holding in Target at any time during the Exclusivity Period.

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

- (a) is reasonably capable of being valued and completed in accordance with its terms, having regard to conditionality and taking into account all relevant legal, financial, timing, regulatory and other aspects of such Competing Proposal, including the capacity of the proposing party to consummate the transactions contemplated by the Competing Proposal (including having regard to funding sources), in each case, to the extent known by the Target Board; and
- (b) would, or would be reasonably likely to, if completed substantially in accordance with its terms, result in a transaction that is more favourable to the Target Shareholders (as a whole) than the Potential Transaction, taking into account all the relevant terms and

conditions and other aspects of the Competing Proposal, including (but not limited to) in respect of each of the Competing Proposal and the Potential Transaction,

- (i) the capacity of the proposing party to consummate the transactions contemplated by the Competing Proposal (including having regard to funding sources);
- (ii) consideration (including value and type), conditionality, funding, certainty and timing;
- (iii) the probability of the Competing Proposal being completed compared to the Potential Transaction; and
- (iv) any other relevant legal, financial, regulatory and other matters.

**Target Board** means the board of directors of Target (as constituted from time to time).

**Target Group** means Target and its Related Entities.

**Target Shares** means any fully paid ordinary share on issue in Target.

**Target Shareholder** means a person who is identified on the register of members of Target maintained by, or on behalf of, Target in accordance with section 168(1) of the Corporations Act as a holder of Target Shares from time to time.

**Third Party** means any person other than Bidder or any of its Related Entities or Representatives.

**Virtual Data Room** means the virtual data room established by Target for the purposes of providing information to Bidder for the purposes of the Bidder Investigations in accordance with this Deed.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (d) The following rules of interpretation apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a clause, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Deed.
  - (vi) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - (vii) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document,

and includes the recitals, schedules and annexures to that agreement or document.

- (viii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form (and includes a communication by electronic mail).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) Unless defined in this Deed or the context requires otherwise, a word defined in the Corporations Act has the same meaning in this Deed.

### 1.3 Consents and approvals

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

## 2 Confidentiality Agreement

Except as provided in clauses 4.6(b) and 4.6(c), nothing in this Deed limits or affects the operation of the Confidentiality Agreement in accordance with its terms.

## 3 Agreed Announcements

On the first Business Day after the date of this Deed (or, if a trading day on the ASX falls before the first Business Day after the date of this Deed, that trading day), the parties will make public announcements in the form agreed by the parties and confirmed by way of email exchange between their legal or financial advisers.

## 4 Due diligence, shareholder engagement and standstill

### 4.1 Conduct of due diligence by Bidder

- (a) During the Exclusivity Period, Bidder will conduct financial, technical and legal due diligence (including (without limitation) for the purposes of Bidder analysing, valuing and verifying the synergies achievable from the Proposal) in respect of Target, together with such other investigations and activities as Bidder determines are necessary (acting reasonably) for the purposes of evaluating, assessing, negotiating or implementing the Potential Transaction (the **Purpose**) (**Bidder Investigations**).
- (b) Bidder must use its best endeavours to conduct and complete (to its reasonable satisfaction) the Bidder Investigations before the end of the Exclusivity Period.
- (c) In order to enable Bidder to undertake the Bidder Investigations, and subject to Bidder complying with its obligations under the Confidentiality Agreement and the Clean Team Protocol, subject to clause 4.2, Target agrees (throughout the Exclusivity Period) to:

- For personal use only
- (i) promptly provide or make available (as applicable) to Bidder and its Representatives all non-public information concerning Target and its business which is in the possession of Target and which is reasonably requested by Bidder for the purposes of conducting the Bidder Investigations, including any such information described in the Due Diligence Request List or subsequently requested via further due diligence request lists or the RFI Process;
  - (ii) at the reasonable request of Bidder, arrange for such presentations by, and discussions with, Target Group management as Bidder considers necessary (acting reasonably) for the Purpose and on the basis that Representatives of the Target will be entitled to attend and observe such presentations and discussions;
  - (iii) provide reasonable access to the members of senior management of the Target Group to the extent reasonably necessary for the Purpose;
  - (iv) provide such information and assistance as Bidder may reasonably request to assist Bidder in determining what Regulatory Approval Applications may be required and preparing such Regulatory Approval Applications; and
  - (v) provide such information as Bidder or a Related Entity of Bidder may reasonably require in connection with its or their engagement with any Equity Financier or Debt Financier (as those terms are defined in the Confidentiality Agreement) in connection with the Proposal.
- (d) Target will use its reasonable endeavours to ensure that the Virtual Data Room includes substantially all of the due diligence materials (to the extent that they exist) requested in the Due Diligence Request List (**Data Room Material**) within two weeks after the date of this Deed. Target will notify Bidder when, to the best of Target's knowledge, the Virtual Data Room has been populated with all, or substantially all, the Data Room Material.
- (e) Subject to paragraph (f), Target will, during the Exclusivity Period, provide or procure Bidder and its Representatives reasonable, non-disruptive access, on reasonable notice, to inspect sites, assets and premises of the Target Group for the purposes of the Bidder Investigations.
- (f) Bidder must ensure that any person provided with access under paragraph (e) complies with the reasonable requirements of Target in respect of that access.
- (g) Subject to clause 4.1(h), Bidder must inform the Target prior to approaching or making any notification or application to a Government Agency to which Bidder has determined (acting reasonably and in good faith (having regard to the information provided by Target under clause 4.1(c)(iv)) a Regulatory Approval Application must be made in connection with the Potential Transaction. Bidder must:
- (i) consult with Target as reasonably requested about the content of any Regulatory Approval Application and related material correspondence to the extent it includes information about the Target so that Target has a reasonable opportunity to comment on such information before submission, and, prior to submitting each such document, Bidder must:
    - (A) correct any factual inaccuracy in such information identified by Target and notified to Bidder; and
    - (B) consider in good faith any other comments notified to it by Target; and
  - (ii) keep Target reasonably informed of the status of a Regulatory Approval Application.
- (h) The parties agree that:

- (i) subject to clause 4.1(h)(ii), (i) subject to Bidder having complied with its obligations under clause 4.1(g), Bidder is not required to obtain any prior approval by the Target of Regulatory Approval Applications, nor any correspondence with a Government Agency, and (ii) nothing in clause 4.1(g) requires Bidder to provide the Target with any information in relation to Bidder or its Related Entities that is confidential, competitively sensitive or privileged information; and
- (ii) notwithstanding anything to the contrary in clause 4.1(g) or clause 4.1(h)(i), Bidder must not, and must procure that its Representatives do not, approach, or make any notification or application (including, but not limited to, a Regulatory Approval Application) to a Government Agency in connection with, or for the purpose of seeking, the clearance of the Potential Transaction (or any transaction contemplated by it) under or in connection with competition and/or antitrust laws and/or regulations in the applicable jurisdiction without the prior written consent of Target). Bidder confirms that, as at the date of this Deed, it has not made any notification or application to, or commenced any correspondence or discussions with, a Government Agency in connection with, or for the purpose of seeking, the clearance of the Potential Transaction (or any transaction contemplated by it) under or in connection with competition and/or antitrust laws and/or regulations in the applicable jurisdiction.
- (i) If Target reasonably requests (from time to time) during the term of this Deed, Representatives (who are either directors, officers or employees) of Bidder and Target must attend a meeting (whether face to face or by videoconference) at which such Representatives of Bidder must, acting in good faith, discuss the status and progress of the Bidder Investigations.

#### 4.2 Limitations on Target's obligations

Notwithstanding anything to the contrary in clause 4.1, Target is not required, and nothing in clause 4.1 requires Target a Target Group member or a Representative of Target, to provide or make available to Bidder or its Related Entities information (including documents) or access if the Target has determined (acting reasonably, in good faith and having obtained legal advice):

- (a) that Target (or a member of the Target Group) is prohibited from disclosing to Bidder or its Related Entities (whether because such disclosure would breach a material confidentiality obligation owed to a Third Party (and only if such potential breach cannot be appropriately managed or otherwise mitigated by other means including lawyer to lawyer disclosure or the Clean Team Protocol), the Clean Team Protocol, or any applicable law, regulation, order, rule or direction or requirement of a Government Agency);
- (b) the information is subject to legal professional privilege (to the extent that privilege cannot be preserved as a result of disclosure to Bidder); or
- (c) the information relates to the consideration by the Target Board or the Target Group's management of previous control transactions in relation to Target, the Proposal, the Potential Transaction or, without limiting clause 7.5, any Competing Proposal).

#### 4.3 Early termination of Bidder Investigations

- (a) Each party acknowledges that the other party has the right at any time on written notice to the other party to terminate the Bidder Investigations. Termination of such investigations is without prejudice to any other rights of the parties under this Deed, including, in the case of termination by Target of such investigations prior to the end of



the Exclusivity Period, Bidder's right to payment under clause 8. Without limiting the foregoing, termination of such investigations will not affect in any way each party's continuing obligations under the Confidentiality Agreement.

- (b) If Bidder terminates the Bidder Investigations, this Deed will terminate in accordance with clause 6(a) (but without affecting Bidder's or Target's obligations under the Confidentiality Agreement).

#### 4.4 No restrictions on other arrangements

For the avoidance of doubt:

- (a) neither Bidder nor Target has any obligation to proceed with the Proposal or the Potential Transaction following completion of the Bidder Investigations; and
- (b) nothing in this Deed is to be taken as constraining Bidder or Target from requesting other arrangements, terms or conditions to implement the Potential Transaction if Bidder or Target (as applicable) determines to proceed with the Potential Transaction, and nothing in this Deed is to be taken as any agreement by Target or Bidder (as applicable) to agree to such request.

#### 4.5 Promote the Proposal

Target must actively cooperate with Bidder, and participate in efforts reasonably requested by Bidder, including by:

- (a) providing information in relation to Substantial Target Shareholders reasonably requested by Bidder;
- (b) using reasonable endeavours to make introductions to relevant representatives of Substantial Target Shareholders; and
- (c) attending meetings, or participating in discussions, with Substantial Target Shareholders,

to promote the merits of the Potential Transaction and canvassing for support of the Potential Transaction.

#### 4.6 Standstill

- (a) Without limiting Bidder's or a Related Entity's obligations under the Confidentiality Agreement, subject to clauses 4.6(b), 4.6(c) and 4.6(e), Bidder must not, and must procure that its Restricted Related Entities do not:
  - (i) subscribe for, purchase or acquire, or agree or offer to subscribe for, purchase or acquire, any Target Shares or other securities in Target or a Related Entity of Target, or any direct or indirect rights, warrants or options to acquire any Target Shares or other securities in Target or a Related Entity of Target, or otherwise acquire or agree or offer to acquire a Relevant Interest in any Target Shares or other securities in Target;
  - (ii) enter into any agreement or arrangement with any person involving the conferring of rights the economic effect of which is equivalent or substantially equivalent to the acquisition, holding or disposal of Target Shares or other securities in Target (including, but not limited to, cash-settled derivative contracts, swaps, contracts for difference or other derivative contracts);
  - (iii) solicit or enter into any discussions or negotiations with, or enter into any agreement or arrangement with or become an Associate of, any Third Party (other than a Representative of Bidder) with respect to ownership or control of, or an economic interest in, Target Shares, other securities in Target, or all or part of

- the business, operations, management, affairs or assets of Target or any of its Related Entities;
- (iv) solicit proxies or support from Target Shareholders (whether by way of a voting agreement or otherwise) for any proposal by Bidder or a Representative (either alone or together with one or more of its Representatives or Associates) or other arrangement in relation to Target or its assets (including soliciting any commitment or agreement from a Target Shareholder to vote against, or to not accept, a Competing Proposal), or otherwise seek to influence or control the composition of Target Board or the management or policies of Target (including seeking to call, or seeking support for the calling of, a general meeting of Target Shareholders);
  - (v) announce an intention to make a takeover bid (however structured, whether off-market, on-market or otherwise) for any or all securities in Target or any class of securities in Target (including, but not limited to, Target Shares) or make such a takeover bid;
  - (vi) publicly announce that it will do, or attempt to do, or has an intention or desire to do, anything referred to in clauses 4.6(a)(i) to 4.6(a)(v) (inclusive); or
  - (vii) procure, aid, abet, assist, encourage, counsel, induce, instruct or ask any other person to do or in doing anything referred to in clauses 4.6(a)(i) to 4.6(a)(v) (inclusive), other than as permitted by any such clause.
- (b) Notwithstanding any provision to the contrary in the Confidentiality Agreement, neither Bidder nor any of its Restricted Related Entities is prevented from taking any action referred to in clause 4.6(a):
- (i) if the action is the provision of a confidential offer or proposal by Bidder to the Target Board;
  - (ii) to the extent that it is expressly permitted under clause 4.5;
  - (iii) to the extent that the Target Board has given its prior written consent to the relevant action being taken;
  - (iv) pursuant to, or to permit the making of, a takeover bid made by Bidder or a Restricted Related Entity which:
    - (A) is at an all cash price at or above \$5.00 per Target Share (subject only to reductions for distributions made by Target equivalent to those expressly contemplated in the Indicative Offer Letter); or
    - (B) the Target Board publicly recommended be accepted by Target Shareholders (in the absence of a superior proposal) when first announced (or has agreed in writing that it will publicly recommend be accepted by Target Shareholders (in the absence of a superior proposal)); or
  - (v) in accordance with a Scheme Implementation Agreement executed by Target and Bidder.
- (c) Notwithstanding any provision to the contrary in the Confidentiality Agreement, if:
- (i) a Third Party publicly announces its intention to make a takeover bid that, if it was declared or otherwise became unconditional, would result in that Third Party acquiring more than 50% of the Target Shares on issue (on a fully diluted basis);

- (ii) a Competing Proposal of a kind described in paragraph (b) of the definition of 'Competing Proposal' is publicly announced by a Third Party or is notified to Bidder by Target under clause 7.5; or
- (iii) any Third Party (either alone or together with one or more of its Associates) (other than (A) a portfolio institutional investor; (B) a person or entity that is acting as a custodian, nominee or bare trustee; or (C) an institutional investor which could not reasonably be regarded as having acquired the Substantial Interest for the purposes of making a Competing Proposal) acquires voting power in, or becomes the holder of, or enters into an equity derivative transaction in respect of, more than 7.5% of the Target Shares on issue (on a fully diluted basis) (**Substantial Interest**), and the Third Party discloses that Substantial Interest to the ASX, after the date of this Deed,

with effect from that time, neither Bidder nor any of its Restricted Related Entities is prevented from:

- (iv) announcing an intention to make a takeover bid (however structured, whether off-market, on-market or otherwise) for all Target Shares on issue or making such a takeover bid (with such a takeover bid being a **Permitted Takeover Bid**); or
- (v) after Bidder or a Restricted Related Entity has announced its intention to make a Permitted Takeover Bid, taking any action referred to in:
  - (A) clause 4.6(a)(i), to the extent that, but for this clause 4.6(c)(v)(A), it prohibits Bidder or the Restricted Related Entity that made the Permitted Takeover Bid from acquiring Target Shares on-market (as that term is defined in the Corporations Act) during the bid period (as that term is defined in the Corporations Act) in respect of that Permitted Takeover Bid; and
  - (B) clauses 4.6(a)(iii) and 4.6(a)(iv) to the extent that, but for this clause 4.6(c)(v)(B), they prohibit Bidder or the Restricted Related Entity that made the Permitted Takeover Bid from soliciting support from Target Shareholders for, and encouraging Target Shareholders to accept, the Permitted Takeover Bid.
- (d) Without limiting the operation of paragraph (b), if any Third Party (other than a Third Party described in clause 4.6(c)(iii)(A) to (C)) (**Interloper**) acquires a Substantial Interest after the date of this Deed, neither Bidder nor any of its Restricted Related Entities is prevented from taking any action described in clauses 4.6(a)(i) or (ii), provided that, if the Bidder or its Restricted Related Entities acquires Target Shares pursuant to this clause (a **Permitted Stake**) and if the Interloper within 12 months of the Interloper first acquiring its Substantial Interest:
  - (i) makes a takeover bid that, if it was declared or otherwise became unconditional, would result in that Third Party acquiring more than 50% of the Target Shares on issue (on a fully diluted basis); or
  - (ii) enters into an implementation agreement with the Target to acquire 100% of the Target shares on issue by way of a scheme of arrangement,
 

at a price or value exceeding \$5.00 per Target Share (each a **Competing Interloper Offer**), the Bidder must:

    - (iii) within one month of the Competing Interloper Offer, make, or announce an intention to make, a Permitted Takeover Bid at or above the offer price (or an

equivalent cash price) to the Competing Interloper Offer or provide the Target with another offer or proposal that the Target Board determines is a Superior Proposal to the Competing Interloper Offer; or

- (iv) in the case of a:
- (A) Competing Interloper Offer that is a takeover bid, prior to the end of the relevant offer period (as may be extended):
    - (1) accept the Competing Interloper Offer; or
    - (2) otherwise dispose of the Permitted Stake; or
  - (B) Competing Interloper Offer that is a scheme of arrangement:
    - (1) not vote against the resolution to approve the scheme of arrangement; or
    - (2) dispose of the Permitted Stake prior to the shareholder meeting to approve the scheme of arrangement,

provided that if, in any such case, at the time at which Bidder may be required to accept the Competing Interloper Offer or at the time of the shareholder meeting to approve the scheme of arrangement (as the case may be) there is more than one takeover bid and/or one or more takeover bids and scheme proposal, Bidder may elect at its discretion which of the competing offers or proposals it prefers (if any), and perform its obligations under subparagraph (A) or subparagraph (B) above accordingly.

- (e) The restrictions and obligations in clause 4.6(a) will cease to apply, and will be of no further force or effect, on the date which is the earlier of:
- (i) 6 months after the date of termination this Deed;
  - (ii) the date on which the Target terminates the Bidder Investigations under clause 4.3 (except where Target was entitled to terminate this deed under clause 6(b) at the time that Target terminated the Bidder Investigations); and
  - (iii) the date on which Target files for bankruptcy protection, liquidation or becomes subject to any other insolvency proceedings.
- (f) The Target:
- (i) represents and warrants to Bidder as at the date of this Deed that any person to whom the Target has provided access to an electronic data room maintained by or on behalf of Target within the 12 months prior to the date of this Deed for the purpose of facilitating a Competing Proposal is subject to obligations at least as onerous (in all material respects) as those set out in clause 4.6 of this Deed;
  - (ii) undertakes to Bidder that it will not, on and from the date of this Deed and during the term of this Deed, provide material non-public information in relation to the Target or any of its Related Entities to any person in relation to a Competing Proposal, unless such person is subject to obligations at least as onerous (in all material respects) as those set out in clauses 4.6(a) to 4.6(e) of this Deed and that continue to apply at the time of the provision of such material non-public information in relation to Target or any of its Related Entities (**Third Party Standstill Obligations**); and
  - (iii) undertakes that it will not exercise any discretion to waive or vary the terms of any Third Party Standstill Obligations, or provide any consent to undertake any

action otherwise restricted by Third Party Standstill Obligations, unless the Target has provided an equivalent waiver, variation or consent to Bidder.

Notwithstanding anything to the contrary in this clause 4.6(f), Target's obligations and undertakings under this clause 4.6(f) cease to apply, and will be of no further force or effect, with effect from the earliest to occur of the termination of this Deed in accordance with clause 6(a) or 6(b), and the time that Bidder ceases to be bound by clause 4.6.

- (g) Notwithstanding anything to the contrary provided elsewhere herein, none of the provisions of this Deed shall in any way limit the activities of affiliates of Kohlberg Kravis Roberts & Co. L.P. in their businesses distinct from the private equity business, provided that the Confidential Information is not made available to employees (other than compliance personnel for compliance purposes or non-compliance personnel who are directors or officers of such affiliates for supervisory purposes) of such affiliates of Kohlberg Kravis Roberts & Co. L.P.

## **5 Negotiation of Potential Transaction**

### **5.1 Negotiation of Potential Transaction**

- (a) Subject to paragraph (b), Bidder and Target agree that, during the Exclusivity Period, they will negotiate in good faith a Scheme Implementation Agreement and any other transaction documents required to implement the Potential Transaction.
- (b) Bidder's obligation under clause 5.1(a) terminates if Target terminates the Bidder Investigations under clause 4.3.
- (c) Bidder and Target each acknowledge and agree that:
- (i) each of the Proposal and the Potential Transaction remains indicative and incomplete and subject to Bidder Investigations, board approvals (in respect of both Bidder and Target) and negotiations between the parties;
  - (ii) the Proposal is expected to proceed by way of a scheme of arrangement, but may proceed by way of an agreed takeover bid or other agreed transaction structure;
  - (iii) this Deed is not intended to, and does not, impose any binding obligations on the parties to give effect to the Proposal or the Potential Transaction; and
  - (iv) neither the Proposal nor the Potential Transaction will become binding on the parties until such time as the Scheme Implementation Agreement (and any other transaction documents required to implement the Potential Transaction and is required to be executed at the same time as the Scheme Implementation Agreement) is approved by the Target Board and the board of Bidder and is duly executed by each party.

### **5.2 Commitment of resources**

Bidder and Target agree during the Exclusivity Period, to commit all reasonably necessary resources (including management and financial, legal and other professional advisory resources) at their own cost to enable:

- (a) Bidder to complete the Bidder Investigations in relation to the Target Group; and
- (b) the preparation, negotiation and finalisation of a Scheme Implementation Agreement (and any other transaction documents required to implement the Potential Transaction),
- before the end of the Exclusivity Period.

### 5.3 Bidder Withdrawal Notice

If, at any time during the Exclusivity Period, Bidder:

- (a) determines that it will cease to pursue the Potential Transaction or the Proposal; or
- (b) determines that it will pursue the Potential Transaction (or another transaction in respect of Target or the Target Group) on terms that are less favourable to Target and/or Target Shareholders than those set out in the Proposal (or has made a proposal to Target to that effect),

it must notify Target in writing as soon as reasonably practicable and within 48 hours of such determination (with such notice being a **Bidder Withdrawal Notice**).

## 6 Termination

- (a) This Deed (and the parties' respective obligations under it) will terminate automatically on the earliest to occur of:
  - (i) the Scheme Implementation Agreement is executed;
  - (ii) the Costs Payment Date;
  - (iii) Bidder terminates the Bidder Investigations under clause 4.3;
  - (iv) Target has paid the Agreed Costs to Bidder (if payable) in accordance with clause 8.1 following one of the events set out in clause 8.1.
- (b) Target may terminate this Deed with immediate effect on written notice to Bidder if:
  - (i) Bidder breaches any of its material obligations under this Deed or the Confidentiality Agreement, Target has given Bidder written notice of such breach, and Bidder has not remedied the breach within 10 Business Days of receiving that notice; or
  - (ii) Bidder provides a Bidder Withdrawal Notice to Target.
- (c) Upon termination, this Deed will have no further force or effect and the parties will have no further obligations under this Deed, provided that each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Deed.

## 7 Exclusivity

### 7.1 Termination of existing discussions

Target represents and warrants that:

- (a) as at the time of execution of this Deed, it is not in any negotiations or discussions, and has ceased any existing negotiations or discussions, in respect of any Competing Proposal with any Third Party (other than, for the avoidance of doubt, the discussions with Bidder and its Representatives in respect of the Proposal and the Potential Transaction and the discussions between Target and its own Representatives in respect of the same);
- (b) as at the time of execution of this Deed, any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated; and
- (c) as at the time of execution of this Deed, any Third Party to which material non-public information in relation to the Target or any of its Related Entities has been provided or

made available for the purposes of such person making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been requested to return or destroy that non-public information in accordance with any agreed terms of confidentiality currently in place with such Third Party.

## 7.2 No shop restriction

During the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder, directly or indirectly solicit, invite, or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

## 7.3 No talk restriction

Subject to clause 7.6, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited or initiated by Target or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced.

## 7.4 No due diligence

Subject to clause 7.6, without limiting the general nature of clause 7.3, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder directly or indirectly make available to any Third Party or otherwise disclose to any such Third Party any material non-public information relating to Target or any of its Related Entities; or consent to any person making available to any Third Party any information relating to Target or its Related Entities, with a view to obtaining from such Third Party, or for the purpose of such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

## 7.5 Notification by Target of a Competing Proposal

- (a) During the Exclusivity Period, Target must promptly notify Bidder if it is approached by any Third Party requesting or proposing that it take any action of a kind that would breach its obligations under clause 7.3 or 7.4 (or that would breach its obligations under clause 7.3 or 7.4 if it were not for operation of clause 7.6), where the Target Board reasonably believes (at the time that the approach is made) that such request or proposal is in connection with such Third Party formulating, developing or finalising a Competing Proposal.
- (b) During the Exclusivity Period, within 2 Business Days after Target receives any Competing Proposal, Target must give Bidder notice in writing of:
  - (i) the existence of the Competing Proposal; and
  - (ii) the name and identity of the Third Party who has made the applicable Competing Proposal and all material terms of the applicable Competing Proposal (including the proposed price or, to the extent stated in the Competing Proposal, implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any) (in each case, to the extent known by Target).

## 7.6 Fiduciary exception

- (a) This clause 7.6 only applies with effect on and from the date that is the later of:
- (i) four (4) weeks following the Data Room Open Date; and
  - (ii) four (4) weeks following the date of this Deed.
- (b) Subject to paragraph (a), and subject to Target having complied with its obligations under clause 7.7 (to the extent that they apply at the applicable time), each of clauses 7.3 and 7.4 does not apply to the extent that they restrict Target (or a Representative of Target) from taking or failing or refusing to take any action in relation to a Competing Proposal (which was not brought about by a breach by Target of clause 7 arising out of the wilful or intentional conduct of the Target or any of its Representatives) if the Target Board, acting in good faith, determines:
- (i) having consulted with its financial advisers that such Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
  - (ii) having received written legal advice from its external legal advisers, that failing or refusing to take the action, or taking the action (as applicable) in relation to the Competing Proposal would, or would be reasonably likely to, constitute a breach of the fiduciary or statutory duties of the Target Directors.

## 7.7 Matching right

- (a) Without limiting clause 7.1, 7.2 or 7.3, during the Exclusivity Period, Target:
- (i) must not, and must procure that each of its Related Entities do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any one or more of a Third Party, Target or any Related Entity of Target proposes or propose to undertake or give effect to a Competing Proposal (which, for the avoidance of doubt, excludes a confidentiality agreement entered into between a Target Group member and a Third Party for the purpose of facilitating a Competing Proposal, to the extent permitted by this clause 7); and
  - (ii) must use its reasonable endeavours to ensure that none of the Target Directors publicly recommend a Competing Proposal (or recommend against the Proposal) or make any public statement to the effect that they may do so at a future point, unless:
    - (iii) the Competing Proposal is a Superior Proposal;
    - (iv) Target has provided Bidder with:
      - (A) the material terms and conditions of the Competing Proposal, including price and the identity of the Third Party making the Competing Proposal (in each case, to the extent known by Target); and
      - (B) if the Competing Proposal is a Competing Proposal of a kind described in paragraph (c) of the definition of 'Competing Proposal' but not also a Competing Proposal of a kind described in paragraph (a) or (b) of the definition of 'Competing Proposal', reasonable details of the material reasons for the Target Board's determination that the Competing Proposal is a Superior Proposal including the Target Board's assessment of the value of the Target Group following completion of the Competing Proposal and the basis for that assessment);



- (v) Target has given Bidder at least three Business Days after the date of the provision of the information referred to in paragraph (iv) to provide a matching or superior proposal to the terms of the Competing Proposal; and
- (vi) either:
- (A) Bidder has not announced or otherwise formally proposed to Target (in writing) a Bidder Counterproposal to the Competing Proposal by the expiry of the three Business Day period in paragraph (v); or
  - (B) if Bidder has not announced or otherwise formally proposed to Target (in writing) a Bidder Counterproposal before the expiry of the three Business Day period in paragraph (v), either:
    - (1) Bidder has not amended the Bidder Counterproposal to address the reasons given by the Target Board within the two Business Period required by clause 7.7(b)(iii); or
    - (2) Target has notified Bidder of the Target Board's determination that the applicable amended Bidder Counterproposal would not provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal.
- (b) If Bidder formally proposes to Target (in writing) or announces a counterproposal to the Competing Proposal (which, for the avoidance of doubt, may involve a counterproposal for the same or different assets or interests that are the subject of a Competing Proposal) (**Bidder Counterproposal**) by the expiry of the three Business Day period in paragraph (a)(v):
- (i) Target must procure that the Target Board considers the Bidder Counterproposal and determines, acting in good faith, whether the Bidder Counterproposal would provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal (and the Competing Proposal) and then promptly give Bidder notice of the determination of the Target Board (stating reasons for the determination); and
  - (ii) if the determination of the Target Board is that the Bidder Counterproposal would provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, then, for a period of three Business Days after Target gives Bidder notice of the Target Board determination under paragraph (i), Target and Bidder must use their best endeavours to agree the transaction documents necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
  - (iii) if the determination of the Target Board is that the Bidder Counterproposal would not provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, then Target must allow Bidder a further two Business Days after Target gives Bidder notice of the Target Board's determination under paragraph (i) to amend the Bidder Counterproposal to address the reasons identified by Target in the notice given under paragraph (i) and if Bidder does so then the process in paragraphs (i) and (ii) will apply to the amended Bidder Counterproposal as if it was a "Bidder Counterproposal" for the purposes of those paragraphs.

## 7.8 Normal provision of information

Nothing in this clause 7 prevents Target or a Representative from (directly or indirectly):

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law (including to satisfy its obligations under the ASX Listing Rules);
- (e) making presentations or providing information to, or responding to enquiries from, or engaging with, Target Shareholders, brokers, portfolio investors, analysts and other third parties in the ordinary course of business (provided that such action does not result in a breach of clause 7.2); or
- (f) responding to queries or discussion points raised by a Target Shareholder to Target in respect of that Target Shareholder's shareholding (including in relation to that shareholder's future intentions regarding its shareholding), provided that these queries or discussion points were not initiated by Target and that Target's responses to these queries or discussion points do not result in a breach of clause 7.2.

## 8 Recovery of Bidder's Costs

### 8.1 Payment

Target must, on the Costs Payment Date (or such earlier date as may be specified in the following paragraphs), pay to Bidder the Agreed Costs in cleared funds (without withholding or set off) into a bank account notified in writing to Target by Bidder, if any of the following occurs:

- (a) Target is in material breach of this Deed provided that, if the breach is capable of being remedied, the Target has failed to remedy that breach within 5 Business Days of receiving notice from Bidder of the breach. Without limiting the circumstances that might constitute a material breach, any breach by Target of clause 7 arising out of the wilful or intentional conduct of the Target or any of its Representatives is deemed to be a material breach that is not capable of being remedied;
- (b) Bidder gives to Target, prior to the end of the Exclusivity Period, written confirmation that it is willing to proceed with a Potential Transaction on the terms of the Proposal, having completed its Bidder Investigations, and Target fails to announce to the market, within 2 Business Days of receipt of that confirmation, that the Target Board has unanimously resolved that it intends to recommend (in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Proposal is in the best interests of Target Shareholders, and subject to the execution of a Scheme Implementation Agreement in a form acceptable to Target) that Target Shareholders vote in favour of the Potential Transaction the subject of the Proposal as confirmed;
- (c) prior to the expiry of the Exclusivity Period, Target terminates the Bidder Investigations under clause 4.3, in which case the Agreed Costs will be due and payable on the date after the date on which Target terminates the Bidder Investigations;
- (d) no earlier than the expiry of the Exclusivity Period, but prior to the Costs Payment Date, Bidder (or its nominated Related Entity) executes and delivers a Scheme Implementation Agreement (in an Acceptable Form, and accompanied by binding equity commitment letters in favour of Target and debt commitment letters that are sufficient to satisfy

Bidder's (or its Related Entity's) obligations to pay the consideration under the Potential Transaction) to Target and Target fails to return a signed counterpart to Bidder within 4 Business Days of delivery; or

- (e) prior to the expiry of the Exclusivity Period:
- (i) Target enters into any legally binding agreement to give effect to a Competing Proposal (which, for the avoidance of doubt, excludes a confidentiality agreement entered into between a Target Group member and a Third Party for the purpose of facilitating a Competing Proposal, to the extent permitted by this clause 7); or
  - (ii) a Third Party has made, or publicly announced its intention to make, a takeover bid under Chapter 6 of the Corporations Act for Target Shares and such takeover bid has been recommended by the Target Board; or
  - (iii) a Regulated Event occurs or is announced by the Target and Bidder notifies the Target in writing that Bidder (acting in good faith) is withdrawing its Proposal as a result of the occurrence or announcement of the Regulated Event,

in any of which cases, the Agreed Costs will be immediately due and payable on the date after the date on which the event described in paragraphs (i), (ii), or (iii) (as applicable) occurs.

## 8.2 Limitation and exclusive remedy

- (a) Subject to paragraph (c), the maximum aggregate amount that Target is required to pay in relation to this Deed (including as a result of any breach of this Deed by Target) is the amount of the Agreed Costs and in no event will the aggregate liability of Target under this Deed exceed the amount of the Agreed Costs.
- (b) Subject to paragraph (c), where the Agreed Costs are paid by Target to Bidder in accordance with this Deed, Bidder cannot make any claim against Target, its Related Entities or their Representatives, under or in connection with this Deed.
- (c) Clauses 8.2(a) and (b) do not apply in respect of a breach of clause 7 of this Deed by Target arising out of the wilful or intentional conduct of the Target or any of its Representatives. For the avoidance of doubt, payment by Target of the Agreed Costs does not release Target from its obligations under clause 7 for the remainder of the term of this Deed.

## 8.3 Agreed costs payable only once

Without limiting clause 8.2:

- (a) Target can only ever be liable to pay the Agreed Costs once; and
- (b) where the Agreed Costs become payable to Bidder under this clause 8 and are actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent Agreed Costs.

## 8.4 Compliance with law

This clause 8 imposes obligations on Target only to the extent that the performance of all or part of those obligations:

- (a) does not constitute "unacceptable circumstances" as declared by the Takeovers Panel (unless and until a "review Panel" reverses that declaration); and
- (b) is not determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of any Target Director) by a court of competent

jurisdiction (unless and until a court of appeal (of competent jurisdiction) overturns that decision).

The parties must not make, or cause or permit to be made, any application to a court or the Australian Takeovers Panel (to the extent applicable) for or in relation to a declaration or determination of a kind referred to in clause 8.4(a) or 8.4(b).

## 8.5 No Agreed Costs payment in certain circumstances

Despite anything to the contrary in this clause 8, the Agreed Costs will not be payable to Bidder if:

- (a) prior to the Agreed Costs becoming payable under this clause 8, Target was entitled to terminate this Deed under clause 6(b); or
- (b) the Scheme Implementation Agreement is executed by the parties to it. The parties acknowledge and agree that the Scheme Implementation Agreement will include a break fee of an amount equal to 1% of the aggregate cash consideration payable to Target Shareholders on implementation of the Potential Transaction, payable by the Target to Bidder on customary terms and conditions.

## 9 GST

### 9.1 Recovery of GST

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

### 9.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it must be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### 9.3 Adjustment events

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

### 9.4 Cost exclusive of GST

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

### 9.5 Survival

- (a) This clause will not merge upon completion and will continue to apply after expiration or termination of this Deed.

### 9.6 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) will have the same meaning in this clause.

## 10 General

### 10.1 Amendment

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

### 10.2 Assignment

- (a) Bidder may not assign any its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of Target (acting reasonably).
- (b) Target may not assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of Bidder (acting reasonably).

### 10.3 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, fax or email to the address, fax number or email address below or the address, fax number or email address last notified by the intended recipient to the sender:

- (i) to Bidder: C/- InVivo Group  
83, Avenue de la Grande Armee  
75016 Paris  
France  
  
Attention: Thierry Blandinières and Maha Fournier  
  
Email: [tblandinieres@invivo-group.com](mailto:tblandinieres@invivo-group.com) and  
[mfournier@invivo-group.com](mailto:mfournier@invivo-group.com)  
  
copy to:  
  
[pharbula@invivo-group.com](mailto:pharbula@invivo-group.com)  
[alecomte@invivo-group.com](mailto:alecomte@invivo-group.com)  
[Andrew.Pascoe@Allens.com.au](mailto:Andrew.Pascoe@Allens.com.au);  
[Charles.Ashton@Allens.com.au](mailto:Charles.Ashton@Allens.com.au);  
[Judith.Fargeot@va-fr.com](mailto:Judith.Fargeot@va-fr.com)
- (ii) to Target: Suite C  
2 Park Street  
Sydney NSW 2000  
Attention: Graham Bradley and Mark Palmquist  
Email: [graham@gjbradley.com](mailto:graham@gjbradley.com) and  
[mpalmquist@unitedmalt.com](mailto:mpalmquist@unitedmalt.com)  
  
copy to:  
  
[ljones@unitedmalt.com](mailto:ljones@unitedmalt.com)  
[JWilliamson-Noble@gtlaw.com.au](mailto:JWilliamson-Noble@gtlaw.com.au)  
[CMorse@gtlaw.com.au](mailto:CMorse@gtlaw.com.au)

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and
  - (iv) in the case of email, the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
    - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place specified by the intended recipient as its postal address under clause 10.3(b) or:

- (A) in the case of delivery by hand, post or fax, at a time that is later than 5pm; or
- (B) in the case of delivery by email, at a time that is later than 7pm,

in the place specified by the intended recipient as its postal address under clause 10.3(b), it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

#### 10.4 Entire Agreement

- (a) This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. No party has relied on or is relying on any other Conduct in entering into this Deed and completing the transactions contemplated by it.
- (b) In the event of there being any inconsistency between the terms of this Deed and the Indicative Offer Letter (including any amendment, supplement or addendum to the Indicative Offer Letter), the terms of this Deed will prevail.

#### 10.5 Further assurances

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

**10.6 Governing law and jurisdiction**

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

**10.7 Severability of provisions**

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

**10.8 No waiver**

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

**10.9 No merger**

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

**10.10 Survival**

Notwithstanding anything else in this Deed, for the avoidance of doubt, clause 4.6 survives termination of this Deed (for so long as it continues to apply in accordance with clause 4.6(e)).

**10.11 Costs and duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interests) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne equally by the parties.

**10.12 Counterparts**

This Deed may be executed electronically and may be executed in counterparts. Where a person signs this Deed electronically, the electronic signature is an effective binding signature, and the electronic document containing it can be an effective electronic counterpart of this Deed. In addition, the person intends that any print-out of the signature will also constitute an effective original signature, so that the print-out will also be an executed original counterpart of this Deed.

[Signature page Malteries Soufflet]

**Executed and Delivered as a Deed.**

**Signed Sealed and Delivered by Malteries Soufflet in the presence of:**



**MALTERIES SOUFFLET**  
Quai du Général Sarrail - BP 12  
F - 10402 Nogent sur Seine Cedex

Signature of Witness

**MANA FOURNIER**

Name of Witness

Signature of Authorised Signatory

**BLANDINIÈRES**

Name of Authorised Signatory


For personal use only



[Signature page United Malt Group Limited]

**Executed and Delivered as a Deed.**


**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **United Malt Group Limited:**

  
\_\_\_\_\_

Director

Graham Bradley

Print Name

  
\_\_\_\_\_

Director/Secretary

Lisa Jones

Print Name

For personal use only