



ASX Announcement

25 January 2024

Damstra Technology

(ASX: DTC)

## DAMSTRA ENTERS INTO A SCHEME IMPLEMENTATION DEED WITH IDEAGEN, BOARD UNANIMOUSLY RECOMMENDS IDEAGEN'S OFFER

### KEY HIGHLIGHTS

- Damstra has entered into a Scheme Implementation Deed with Ideagen, under which Ideagen will acquire 100% of the shares in Damstra by way of a Scheme of Arrangement.
- Under the Scheme, Damstra shareholders will receive \$0.24 cash per share<sup>1</sup>, which represents a 140% premium to Damstra's undisturbed share price on 24<sup>th</sup> October 2023 of \$0.10 per share.<sup>2</sup>
- The Damstra Board (including the independent board committee formed for the purpose of considering the Scheme) unanimously recommends that Damstra shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of Damstra shareholders.
- The Directors of Damstra, who in aggregate hold or control approximately 19.7% of Damstra's shares as at the date of this announcement, intend to vote, or cause to be voted, all Damstra shares held or controlled by them in favour of the Scheme.
- Significant shareholders associated with Mr Johannes Risseuw and Mr Christian Damstra controlling over 15.3% of Damstra's shares have agreed to grant Ideagen call options to acquire in aggregate a total of 15.3% of the issued Damstra shares.
- The transaction is subject to Foreign Investment Review Board approval, and other customary conditions, including Damstra shareholder and Court approval.

### Overview of the Scheme

Damstra Holdings Limited (ASX:DTC) (**Damstra** or the **Company**) announces that it has entered into a binding Scheme Implementation Deed (**SID**) with Ideagen Limited (**Ideagen**), which provides for the acquisition by Ideagen of 100% of the shares in Damstra by way of a Scheme of Arrangement under Part 5.1 of the *Corporations Act 2001* (Cth) (**Scheme**) for \$0.24 cash per Damstra share (**Scheme Consideration**).

The Scheme Consideration represents an Equity Value<sup>3</sup> (on a fully diluted basis) of approximately \$69.1 million, and represents:

- a premium of 140% to the closing price of Damstra shares on 24 October 2023 of \$0.10 per share<sup>4</sup>;
- a premium of 134% to the volume-weighted average price of Damstra shares for the one month to and including 24 October 2023 of \$0.10 per share;
- a premium of 161% to the volume-weighted average price of Damstra shares for the six months to and including 24 October 2023 of \$0.09 per share; and
- a 2.8x<sup>5</sup> enterprise value multiple of FY23A revenue based on disclosures made by the Company to the market on 24 August 2023.

### Unanimous recommendation of the Damstra Board

The Board of Damstra formed an independent committee of the Damstra Board (**IBC**), comprising the Independent Directors Drew Fairchild (Chair of the IBC), Morgan Hurwitz, Simon Yencken and Sara La Mela, to consider the proposed Scheme. After having engaged with a number of interested parties in relation to a

<sup>1</sup> Assuming 287,810,732 Damstra shares on issue on a fully diluted basis.

<sup>2</sup> No volume traded on 24 October 2023 with the last undisturbed trading day being 23 October 2023 with a \$0.10 closing share price.

<sup>3</sup> Based on 287,810,732 Damstra shares on issue on a fully diluted basis.

<sup>4</sup> No volume traded on 24 October 2023 with the last undisturbed trading day being 23 October 2023 with a \$0.10 closing share price.

<sup>5</sup> Based on 30-Jun-23 net debt of \$12.1m (including capitalised leases) and FY23A operating revenue of \$29.5m.



potential control transaction involving Damstra, and having regard to a number of factors, including its assessment of Damstra's inherent value and near and medium term growth outlook, the IBC considers the Scheme is in the best interests of Damstra shareholders.

The Damstra IBC believes that the Scheme is an attractive offer for Damstra shareholders for the following key reasons:

- **Certainty of value:** the 100% cash consideration provides Damstra shareholders with certainty of value and the opportunity to realise their investment in full for cash;
- **Significant premium:** the Scheme Consideration represents a 140% premium to Damstra's undisturbed share price on 24 October 2023 of \$0.10 per share; and
- **Limited conditionality:** the Scheme is subject to FIRB approval, and conditions customary for transactions of this type and is not conditional on financing or due diligence.

The Directors, including the members of the IBC, unanimously recommend that Damstra 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 Damstra shareholders.

Subject to those same qualifications, each Director intends to vote all the Damstra shares held or controlled by them in favour of the Scheme.

### Call Options from Significant Shareholders

Ideagen has advised Damstra that entities associated with significant Damstra shareholders, and Damstra Directors, Johannes Risseuw and Christian Damstra have each separately reached agreement to grant Ideagen call options to acquire in aggregate a total of 15.3% of the issued Damstra shares on terms set out in agreements that will be disclosed in a substantial holder notice to be released by Ideagen to the ASX.

#### Damstra's Chief Executive Officer, Christian Damstra:

"Damstra has built a strong position in enterprise protection software. The Enterprise Protection Platform (EPP) integrates an extensive range of modules and products that allows organisations to mitigate and reduce unforeseen and unnecessary business risks around people, workplaces, assets, and information. Our business model is proven in Australia and New Zealand and our ambition is to continue to grow rapidly in North America.

Damstra's software capabilities align well with Ideagen's strategic ambitions. The transaction with Ideagen demonstrates the success of our strategy and the capability of our people."

#### About Ideagen

Ideagen is a global software company that provides innovative solutions to support governance, quality management, health and safety, risk management, auditing and compliance.. Headquartered in the United Kingdom, with offices across the US, Australia, India, Malaysia and UAE, they are a leading provider of software solutions to a wide range of industries, including manufacturing, construction, finance, healthcare, life sciences, and aviation. Their 11,500 customers include more than 250 global aviation organisations, over 1000 government agencies, nine of the top 10 accounting firms, nine of the top 10 global aerospace and defence corporations, 75% of the top global pharmaceutical companies and 65% of the top global food and drink brands.

#### Ideagen Chief Executive Officer, Ben Dorks, said:

*"Ideagen provides regulated industries with the clarity and confidence to turn risk to resilience, and the addition of Damstra's market-leading workforce and asset management solutions will enhance this.*

*"We've made significant investment in the Asia Pacific region and intend to continue to grow our presence in Australia. Existing Damstra customers will benefit from Ideagen's broader resources and we intend to use our global footprint to introduce Damstra's capabilities to a wider customer base.*

*"It's a great fit into our existing portfolio and we're excited about the product and its people, driving great value for customers."*



## SCHEME TERMS AND CONDITIONS

The implementation of the Scheme is subject to conditions customary for a transaction of this nature, including:

- Damstra shareholder approval;
- Court approval;
- the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Damstra shareholders;
- approval of Australia's Foreign Investment Review Board;
- no Damstra material adverse change;
- no prescribed occurrences; and
- no restraints.

It is also a condition to implementation of the Scheme that existing Damstra warrants, options and other incentive arrangements are dealt with in accordance with the SID.

A copy of the Scheme Implementation Deed, setting out the terms and conditions of the Scheme and associated matters, is attached to this announcement.

Ideagen has advised Damstra that it will fund the Scheme Consideration through a combination of Ideagen's existing committed debt facilities and Ideagen's existing cash on balance sheet. Importantly, the Scheme is not conditional on financing.

The SID contains customary exclusivity provisions including a 'no shop' restriction, 'no talk' and 'no due diligence' restrictions (subject to customary fiduciary exceptions), notification obligations and a matching right.

The SID also includes certain circumstances in which a break fee of approximately \$690,000 would be payable to Ideagen, or a reverse break fee of \$690,000 would be payable to Damstra.

In connection with the Scheme, Damstra has reached agreement with Partners for Growth IV, L.P (**PFG**) in relation to the repayment of its debt facility and the termination of warrants held by PFG for an aggregate amount equal to approximately \$19m (including all costs and fees associated with the repayment of the facilities and termination of the warrants). The repayment obligation is conditional on the Scheme becoming effective, and assumes a repayment date of 22 April 2024 (beyond which time an additional daily charge will apply to the repayment amount).

## INDICATIVE TIMETABLE AND NEXT STEPS

Damstra shareholders do not need to take any action at this point in time.

A Scheme Booklet containing information relating to the Scheme, reasons for the Damstra Board's unanimous recommendation, an Independent Expert's Report and details of the Scheme Meeting is expected to be sent to Damstra shareholders during March 2024.

Shareholders will then have the opportunity to vote on the Scheme at the Scheme Meeting, expected to be held during April 2024.

Subject to shareholder approval being obtained by the requisite majorities and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented by late April 2024.

These dates are indicative and subject to change.

## ADVISORS

Damstra has appointed Jefferies Australia as financial advisor and Gilbert + Tobin as legal advisor.

Ideagen has engaged Morgan Stanley Australia Limited as financial advisor and MinterEllison as legal advisor.

## AUTHORISED BY

This announcement was authorised by Damstra's IBC



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## **Scheme implementation deed**

**Damstra Holdings Limited**

**Ideagen Limited**

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Date: 25 January 2024

## Parties

- 1 **Damstra Holdings Limited ACN 610 571 607** of Suite 11C, Level 3, 299 Toorak Road, South Yarra, 3141 (**Target**)
- 2 **Ideagen Limited** (Company Number 02805019) of One Mere Way, Ruddington, Nottingham, United Kingdom, NG11 6JS (**Bidder**)

## Background

- A The parties have agreed that Bidder will acquire Target by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and Scheme Shareholders.
- B Target and Bidder have agreed to implement the Scheme on and subject to the terms of this deed.

### The parties agree

## 1 Defined terms and interpretation

### 1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

## 2 Agreement to proceed with Transaction

### 2.1 Target to propose Scheme

- (a) Target agrees to propose and implement the Scheme on and subject to the terms and conditions of this deed and the Scheme.
- (b) Target must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by the Court of any condition in respect of the Scheme, without the prior written consent of Bidder.
- (c) Bidder agrees to assist Target in proposing and implementing the Scheme on and subject to the terms and conditions of this deed.

### 2.2 Bidder may elect a Subsidiary

- (a) Target agrees that Bidder may elect, under this clause 2.2, a wholly-owned Subsidiary of Bidder to acquire all of the Target Shares under the Scheme by giving written notice to Target on or before the date that is 10 Business Days prior to the First Court Date.
- (b) Bidder warrants that if it elects a wholly-owned Subsidiary of Bidder to acquire all of the Target Shares pursuant to clause 2.2(a), Bidder and the wholly-owned Subsidiary will both enter into the Deed Poll and Bidder will continue to be bound by this deed, the Deed Poll and the Confidentiality Agreement and will not be

released from any obligations or liabilities under those documents following the election of a subsidiary.

- (c) For the avoidance of doubt, Bidder warrants that if it elects a wholly-owned Subsidiary to acquire all of the Target Shares pursuant to clause 2.2(a), it will ensure the wholly-owned Subsidiary completes the acquisition in accordance with the terms of this deed and the Deed Poll.

### 2.3 Scheme Consideration

- (a) If the Scheme becomes Effective, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares, on and subject to the terms of this deed and the Scheme.
- (b) Subject to the Scheme becoming Effective, Bidder undertakes and warrants to Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that Bidder will:
  - (i) accept that transfer on the Implementation Date; and
  - (ii) in consideration of the transfer to Bidder of all Scheme Shares pursuant to the terms of the Scheme, pay, or procure the payment of, an amount equal to the Aggregate Scheme Consideration, without any deduction, set-off or withholding, in cleared funds into a trust account operated by Target as trustee for the Scheme Shareholders before 12:00pm on the Business Day immediately before the Implementation Date,

in each case in accordance with the terms of this deed and the Scheme.

### 2.4 Target Board recommendation

- (a) Target represents and warrants to Bidder that, as at the date of this deed, each Target Director has confirmed:
  - (i) their recommendation in respect of the Scheme is that the Target Shareholders vote in favour of the Scheme; and
  - (ii) they intend to vote, or cause to be voted, all Target Shares in which they have a Relevant Interest in favour of the Scheme,

in each case subject only to:

  - (iii) the absence of a Superior Proposal; and
  - (iv) the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of the Target Shareholders.
- (b) Subject to clause 2.4(c), Target must procure that:
  - (i) the Target Directors:
    - (A) unanimously recommend that Target Shareholders vote in favour of the resolution to approve the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of the Target Shareholders (the **Recommendation**); and
    - (B) intend to vote, or cause to be voted, all Target Shares in which they have a Relevant Interest in favour of the Scheme in the absence of a



Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of the Target Shareholders (**Voting Intention**); and

- (ii) the Scheme Booklet (including any supplementary disclosure to Target Shareholders) and any material public statement or announcement relating to the Transaction (including, without limitation, the public announcement contemplated by clause 11.1) includes statements by the Target Board and the Target Directors (as applicable) to the effect of sub-clause 2.4(b)(i).
- (c) Target must procure that the Target Board collectively, and the Target Directors individually, do not adversely change or withdraw, or adversely modify or adversely qualify (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that they no longer support the Scheme), its or their Recommendation or Voting Intention unless:
  - (i) Target has received, other than as a result of a breach of clause 6, a Competing Proposal and the Target Board has determined, after the procedure in clause 6.7 has been complied with, that the Competing Proposal constitutes a Superior Proposal; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report (or any update, revision, amendment or supplement to that report) that the Scheme is not in the best interests of Target Shareholders.

### 3 Conditions precedent

#### 3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to implementation of the Scheme are not binding, until and unless each of the following Conditions are satisfied or waived in accordance with clause 3.4:

- (a) **FIRB Approval:** Before 8:00am on the Second Court Date, any of the following occur:
  - (i) Bidder has received a written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), by or on behalf of the Treasurer of the Commonwealth of Australia (or its delegate), stating or to the effect that there are no objections to the Transaction, either unconditionally or subject to the Standard Tax Conditions and/or any other conditions acceptable to Bidder (having regard to the exceptions in clause 3.3(a)(iii));
  - (ii) by reason of lapse of time, the Treasurer of the Commonwealth of Australia is no longer empowered under Part 3 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) to make an order in relation to the Transaction and the Transaction is not otherwise prohibited by section 82 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth); or
  - (iii) where an interim order is made under section 68 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) in respect of the Transaction, the subsequent period for making an order or decision under Part 3 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) elapses without the Treasurer of the Commonwealth of Australia making such an order or decision,

(**FIRB Approval**).

- (b) **ASIC and ASX:** Before 8.00am on the Second Court Date, ASIC and ASX issue or provide all consents, waivers, relief or approvals as are necessary or which Target and Bidder agree (each acting reasonably) are necessary to implement the Scheme and such consents, approvals, waivers or relief have not been withdrawn, cancelled, revoked or adversely amended.
- (c) **Independent Expert:** The Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Target Shareholders before the time when the Scheme Booklet is registered by ASIC, and the Independent Expert maintains that conclusion (including by not qualifying or changing that conclusion in each case in writing or withdrawing the Independent Expert's Report) before 8.00am on the Second Court Date.
- (d) **Court approval:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (e) **Target Shareholder approval:** Target Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act.
- (f) **No restraints:** As at 8:00am on the Second Court Date, there is not in effect any law, rule, regulation, restraining order, other order, injunction, other preliminary or final decision, decree or ruling issued by a court of competent jurisdiction or Government Agency that would restrain, prohibit, impede or make illegal (or could reasonably be expected to restrain, prohibit, impede or make illegal) the implementation of the Transaction.
- (g) **No Prescribed Occurrence:** No Prescribed Occurrence occurs between (and including) the date of this deed and 8:00am on the Second Court Date.
- (h) **No Material Adverse Change:** No Material Adverse Change occurs, or is discovered, announced, disclosed or otherwise becomes known to Bidder, between the date of this deed and 8:00am on the Second Court Date.
- (i) **Target Convertible Securities and Target Cash Incentives:** Target and holders of Target Convertible Securities and/or recipients of Target Cash Incentives have taken all necessary steps by 8.00am on the Second Court Date, including by executing all necessary documents, to ensure that the Target Convertible Securities and Target Cash Incentives are dealt with in accordance with clause 5.5 or otherwise on terms acceptable to Bidder.

### 3.2 Reasonable endeavours

- (a) Bidder must use reasonable endeavours (other than waiver of a Condition) to procure that the Condition in clause 3.1(a) (*FIRB Approval*) is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied.
- (b) Target must, to the extent within its power to do so, use reasonable endeavours to procure that:
- (i) each of the Conditions in clauses 3.1(e) (*Target Shareholder approval*), 3.1(c) (*Independent Expert*), 3.1(g) (*No Prescribed Occurrence*), 3.1(h) (*No Material Adverse Change*) and 3.1(i) (*Target Convertible Securities and Target Cash Incentives*), are satisfied as soon as practicable after the date of this deed; and
  - (ii) continue to be satisfied at all times until the last time that the relevant clause provides that such Condition is to be satisfied.

- (c) Each of Target and Bidder must, to the extent within its power to do so, use reasonable endeavours (other than waiver of a Condition) to procure that:
- (i) each of the Conditions in clauses 3.1(b) (*ASIC and ASX*), 3.1(d) (*Court Approval*) and 3.1(f) (*No restraints*):
    - (A) is satisfied as soon as practicable after the date of this deed; and
    - (B) continues to be satisfied at all times until the last time that the relevant clause provides that it is to be satisfied; and
  - (ii) there is no occurrence within its control or the control of any of its Affiliates that would prevent any of those Conditions being or remaining satisfied.

### 3.3 FIRB Approval

- (a) Without limiting clause 3.2, but subject to clauses 3.3(b) and 3.3(c), Bidder must, to the extent it has not already done so prior to the date of this deed, apply for FIRB Approval within 5 Business Days after the date of this deed and each party must:
- (i) take all steps reasonably required to obtain FIRB Approval as soon as practicable, including responding to requests for information in a timely and fulsome manner and at the earliest practicable time;
  - (ii) keep Target reasonably informed of the progress towards obtaining FIRB Approval, reasonably consult and co-operate with the other party in relation to the obtainment of FIRB Approval, including in relation to all material communications with any Government Agency in relation to FIRB Approval;
  - (iii) act reasonably to consider and accept or agree to any conditions or undertakings imposed, required or requested by a Government Agency, provided that there is no obligation on Bidder to accept or agree to any conditions or undertakings that:
    - (A) would, or would be reasonably likely to have, a material impact on the value expected to be obtained by Bidder from the Transaction as a whole;
    - (B) would, or would be reasonably likely to have a material impact on the business or operations of any Bidder Group member or any Target Group member; or
    - (C) would, or could reasonably be expected to, have been material to Bidder's or a Bidder Group member's decision to enter into this deed and / or pursue implementation of this Transaction;
  - (iv) respond to all requests for information in respect of the application for FIRB Approval at the earliest practicable time;
  - (v) provide the other with all information and assistance reasonably requested in connection with the application for FIRB Approval; and
  - (vi) not, and must ensure that its Affiliates and Representatives do not, do any of the following:
    - (A) apply to any Government Agency for any regulatory approval, in connection with the Transaction; or

- (B) send any submission, notification or communication to, or otherwise contact, any Government Agency, whether formally or informally, in respect of any regulatory approval in connection with the Transaction,

in each case other than:

- (C) in accordance with this clause 3.3; or
  - (D) with the prior written consent of the other party.
- (b) Before Bidder provides Target with any document or information under clause 3.3(a), Bidder may redact or exclude any part of that document or information, or withhold any part of that information, which contains or constitutes confidential, commercially sensitive, competitively sensitive or privileged information.
  - (c) Bidder is not required to disclose confidential, commercially sensitive, competitively sensitive or privileged information relating to the existing business or affairs of any member of the Bidder Group or in respect of any member of the Bidder Group or any Affiliate of a member of the Bidder Group, or information where Bidder reasonably considers that the disclosure of such information would be unlawful or damaging to the commercial or legal interests of Bidder or any member of the Bidder Group or any Affiliate of a member of the Bidder Group or would be reasonably likely to result in a waiver or loss of legal professional privilege.
  - (d) Target must cooperate with, and promptly provide any assistance or information reasonably requested by, Bidder in connection with an application for FIRB Approval.

### 3.4 Waiver of Conditions

- (a) The Conditions in clauses 3.1(a) (*FIRB Approval*), 3.1(d) (*Court Approval*) and 3.1(e) (*Target Shareholder approval*) cannot be waived.
- (b) The Condition in clause 3.1(c) (*Independent Expert*) is for the sole benefit of Target and may only be waived by Target in writing.
- (c) The Conditions in clauses 3.1(g) (*No Prescribed Occurrence*), 3.1(h) (*No Material Adverse Change*) and 3.1(i) (*Target Convertible Securities and Target Cash Incentives*) are for the sole benefit of Bidder and may only be waived by Bidder (in its absolute discretion) in writing.
- (d) The Conditions in clauses 3.1(b) (*ASIC and ASX*) and 3.1(f) (*No restraint*) are for the benefit of both Target and Bidder and may only be waived by written agreement between them.
- (e) Waiver of breach or non-fulfilment of a Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### 3.5 Failure of Condition

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition that has not been waived in accordance with clause 3.4;

- (ii) a Condition becomes incapable of satisfaction and the breach or non-fulfilment of that Condition that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.4; or
- (iii) it becomes more likely than not that the Scheme will not become Effective by the End Date,

and neither of the following has occurred:

- (iv) the Independent Expert opines to the effect that the Scheme is not in the best interests of Target Shareholders; or
- (v) a Superior Proposal has been publicly announced,

then Target and Bidder must promptly consult in good faith to determine whether they can reach agreement with respect to:

- (vi) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date;
  - (vii) an adjournment or change of the date of an application to the Court; or
  - (viii) the Transaction proceeding by way of alternative means or methods.
- (b) If Target and Bidder have not reached agreement under clause 3.5(a) within 5 Business Days (or any shorter period ending at 5:00pm on the day before the earlier of the End Date and the Second Court Date), then, unless the relevant Condition has been waived in accordance with clause 3.4, a party having the benefit of the relevant Condition may terminate this deed by giving written notice to the other party, provided that:
- (i) the relevant circumstances did not arise due to a material breach of this deed by the terminating party or a deliberate act not otherwise expressly permitted by the terms of this deed or deliberate omission of that party which, in each case, either alone or together with other circumstances prevents that Condition being satisfied; and
  - (ii) the terminating party has complied with its obligations under clause 3.2 and this clause 3.5.
- (c) If the Condition in clause 3.1(e) (*Target Shareholder approval*) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 5 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in section 411(4)(a)(ii)(A), provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition in 3.1(e) (*Target Shareholder approval*) is deemed to be satisfied for all purposes.

### 3.6 Certain notices

If a party becomes aware:

- (a) that any Condition has been satisfied; or
- (b) of any fact, matter or circumstance that has resulted, will result or is reasonably likely to result, in a Condition becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms,

it must promptly notify the other party in writing (and in any event within 2 Business Days).

## 4 Implementation steps and Scheme Booklet

### 4.1 Timetable

- (a) Each party must use all reasonable endeavours to commit necessary resources (including management and the resources of external advisers) and ensure that their respective officers and advisers work in good faith and in a timely and cooperative fashion with the other party (including by attending meetings and by providing information) to produce the Scheme Booklet and implement the Transaction as soon as reasonably practicable after the date of this deed and in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 4.1(a) to the extent that such failure is due to circumstances outside that party's control or due to Target, other than as a result of a breach of clause 6, taking or omitting to take any action in response to a Competing Proposal.
- (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 unachievable, the parties will consult in good faith to agree any necessary extensions to ensure such matters are completed within the shortest possible timeframe.

### 4.2 Target 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 after the date of this deed and in accordance with the Timetable and otherwise on and subject to the terms of this deed. Without limiting the foregoing, Target must:

- (a) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report for inclusion in the Scheme Booklet as soon as practicable;
- (b) **Review of draft Independent Expert's Report:** on receipt from the Independent Expert, provide Bidder with the draft Independent Expert's 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), 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;
- (c) **Preparation of Scheme Booklet:**
  - (i) prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) as soon as practicable after the date of this deed in accordance with all applicable laws, including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules;



- (ii) provide Bidder with a reasonable opportunity to review and make comments on drafts of the Scheme Booklet, consult with Bidder in relation to the content of those drafts (other than the Bidder Information), and consider in good faith any reasonable comments provided by or on behalf of Bidder, provided that, in respect of the Independent Expert's Report, any such comments must be limited to matters of factual accuracy and Target makes no representation, and gives no assurance, as to the extent to which such comments will be considered or incorporated by the Independent Expert;
- (iii) obtain Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet), such consent not to be unreasonably withheld or delayed, and Target must not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder; and
- (iv) must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to Target Shareholders.
- (d) **Lodgement of Scheme Booklet:**
- (i) provide to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft to be circulated to ASIC for its review is finalised and to enable Bidder to review such draft before the date of its submission;
- (ii) as soon as reasonably practicable after the date of this deed and in any event no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of that draft to Bidder as soon as practicable thereafter; and
- (iii) keep Bidder informed of any material issues raised by ASIC or ASX in relation to the Scheme Booklet, Transaction Documents or the Transaction, and take into consideration any reasonable comments made by Bidder in relation to such matters raised by ASIC or ASX (provided that, where those matters relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent);
- (e) **No objection statement:** apply to ASIC for:
- (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and
- (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (f) **First Court Hearing:** apply to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (g) **Representation:** procure that it is represented by counsel at the Court Hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (h) **Approval and registration of Scheme Booklet:** request that ASIC register the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (i) **Despatch:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Target Shareholders;

- (j) **Supplementary disclosure:** if, after despatch of the Scheme Booklet, Target becomes aware:
- (i) that information included in the Scheme Booklet is or has become false, misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law but was not included in the Scheme Booklet,
- consult with Bidder as to the form and content of any supplementary disclosure before it is made to Target Shareholders and, to the extent reasonably practicable, provide Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and consider in good faith any comments provided by or on behalf of Bidder. To the extent that any information the subject of any supplementary disclosure is or relates to (or otherwise constitutes) Bidder Information, the supplementary disclosure of such information may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed);
- (k) **Scheme Meeting:** convene and hold the Scheme Meeting to approve the Scheme in accordance with the orders made by the Court at the First Court Hearing;
- (l) **Conditions certificate:** at or before the Second Court Hearing, provide to the Court (through its counsel) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(d) (*Court Approval*)) have been satisfied or waived in accordance with clause 3.4. A draft of such certificate must be provided by Target to Bidder by 4.00pm on the date that is 2 Business Days prior to the Second Court Hearing;
- (m) **Second Court Hearing:** subject to the Conditions (other than the Condition in clause 3.1(d) (*Court approval*)) being satisfied or waived in accordance with clause 3.4, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;
- (n) **Court Documents:**
- (i) prepare the Court Documents; and
  - (ii) provide drafts of those documents to Bidder and consider in good faith any comments provided by or on behalf of Bidder;
- (o) **Bidder representation at Court Hearings:** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;
- (p) **Lodgement of Court order:** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act before 5:00pm on the Business Day immediately following the day on which it receives such office copy (or any later date agreed in writing by Bidder);
- (q) **Quotation of Target Shares and ASX listing:** apply to ASX to have:
- (i) trading in Target Shares suspended from the close of trading on the Effective Date; and
  - (ii) Target removed from the official list of ASX, and quotation of Target Shares on ASX terminated, by the close of trading on the trading day immediately following the Implementation Date;



- (r) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and all applicable laws and regulations;
- (s) **Transfer and registration:** if the Scheme becomes Effective and subject to Bidder having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:
- (i) execute, on behalf of Scheme Shareholders, instruments of transfer of Target Shares held by Scheme Shareholders to Bidder; and
  - (ii) register all transfers of Target Shares held by Scheme Shareholders to Bidder on the Implementation Date;
- (t) **Approval of Scheme Booklet:** procure that a meeting of the Target Board (or a subcommittee thereof) is convened to consider approving the dispatch of the Scheme Booklet to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act, and provide Bidder with a copy of an extract of the Target Board resolutions from the minutes of meeting as soon as practicable after those minutes have been prepared and signed;
- (u) **Listing:** subject to clause 4.2(q), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction, unless Bidder has agreed in writing;
- (v) **Information:**
- (i) provide all necessary information, and procure that the Registry provides all necessary information, in each case in a form reasonably requested by Bidder, about the Scheme, Target Shareholders and Scheme Shareholders to Bidder and its Related Bodies Corporate, which Bidder reasonably requires in order to:
    - (A) understand the legal and beneficial ownership of the Target Shares, and canvass agreement to the Scheme by Target Shareholders, (including the results of directions by Target to Target Shareholders under Part 6C.2 of the Corporations Act);
    - (B) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration and to otherwise enable Bidder to comply with the terms of this deed, the Scheme and the Deed Poll; and
    - (C) review the tally of proxy appointments and directions received by Target before the Scheme Meeting,

and Target must comply with any reasonable request of Bidder for Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in 4.2(v)(i)(A) or 4.2(v)(i)(B) above;
  - (ii) within 5 Business Days after the date of this deed, provide Bidder with:
    - (A) a copy of the Share Register as at the date of this deed to the extent doing so does not breach applicable privacy laws; and
    - (B) the most up to date 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 current as at any date prior to the date of this deed); and

(iii) provide Bidder:

(A) on a fortnightly basis, a copy of the latest Share Register; and

(B) on a fortnightly basis, the most up to date 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 Share 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;

(w) **Proxy solicitation:** in consultation with Bidder, undertake reasonable shareholder engagement and proxy solicitation actions so as to promote the merits of the Scheme and the Transaction and encourage Target Shareholders to vote on the Scheme in accordance with the recommendation of the Target Board, subject to applicable law and ASIC policy;

(x) **Share Register:**

(i) close the Share Register as at the Record Date to determine the identity of Scheme Shareholders and their entitlements to Scheme Consideration; and

(ii) provide Bidder with a complete copy of the Share Register as at the Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Record Date), within one Business Day after the Record Date; and

(y) **implementation of Scheme:** if the Scheme becomes Effective, do all things required of it under the Scheme and all other things (if any) necessary for Target to do to lawfully give effect to the Scheme including all things reasonably required to give effect to the Scheme and the orders of the Court approving the Scheme under section 411(4)(b) of the Corporations Act.

#### 4.3 Bidder obligations

Bidder must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable in accordance with the Timetable and otherwise on and subject to the terms of this deed. Without limiting the foregoing, Bidder must:

(a) **Prepare Bidder Information:** as soon as practicable after the date of this deed:

(i) prepare and promptly provide to Target the Bidder Information for inclusion in the Scheme Booklet, including all information regarding the Bidder Group and Scheme Consideration, in accordance with all applicable laws, including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules; and

(ii) provide Target with successive drafts of the Bidder Information and consider in good faith any reasonable comments provided by or on behalf of Target;

(b) **Final form of Bidder Information:** provide to Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;

(c) **Assistance with Scheme Booklet and Court Documents:** provide any assistance or information reasonably requested by Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) or any Court Documents,

including reviewing drafts of the Scheme Booklet and Court Documents provided by or on behalf of Target and promptly providing comments in good faith;

- (d) **Independent Expert's Report:** provide any assistance or information reasonably requested by Target or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
- (e) **Confirmation of Bidder Information:** promptly after Target requests that it does so (and in any event prior to 5:00pm on the Business Day prior to the First Court Date), confirm in writing to Target that:
  - (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears;
  - (ii) the Bidder Information is accurate and not misleading or deceptive in any material respect (whether by omission or otherwise) and otherwise complies with all applicable laws, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules; and
  - (iii) the Bidder Information is in a form appropriate for inclusion in the Scheme Booklet;
- (f) **Update Bidder Information:** promptly notify Target in writing if it becomes aware:
  - (i) of information which should have been but was not included in the Bidder Information, and promptly provide Target with the omitted information; or
  - (ii) that the Bidder Information is or has become misleading or deceptive in any material respect (whether by omission or otherwise), or otherwise does not comply with applicable laws, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules, and promptly provide Target with all information necessary to ensure the Bidder Information complies with applicable laws and is not false or misleading in any material respect (whether by omission or otherwise);
- (g) **Deed Poll:** before 5:00pm on the date that is 1 Business Day before the First Court Date, execute the Deed Poll, and deliver the fully executed Deed Poll to Target and, if the Scheme becomes Effective, fully comply with the Deed Poll;
- (h) **Conditions certificate:** before 8:00am on the Second Court Date, provide to Target for provision to the Court at the Second Court Hearing a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(d)) have been satisfied or waived in accordance with clause 3.4, a draft of which must be provided to Target by 5:00pm on the date 2 Business Days before the Second Court Date;
- (i) **Representation at Court:** ensure that it is represented by counsel at each Court Hearing, and (if requested by the Court) undertake, through its counsel, to do all things within its power to ensure the fulfilment of its obligations under this deed and the Deed Poll and as are reasonably necessary to ensure the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (j) **Scheme Consideration:** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and in the amount contemplated by clause 2.3(b)(ii), the terms of the Scheme and the Deed Poll;

- (k) **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 2.3(b)(i) and execute instruments of transfer in respect of the Scheme Shares;
- (l) **Promotion of Transaction:** participate in efforts reasonably requested by Target to promote the merits of the Transaction, including:
  - (i) meeting with key Target Shareholders where reasonably requested by Target; and
  - (ii) providing Target with such information and assistance as Target reasonably requests to enable it to promote the merits of the Transaction; and
- (m) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and all applicable laws and regulations.

#### 4.4 Scheme Booklet

- (a) If Target and Bidder (each acting in good faith) are unable to agree on the form or content of a particular part of the Scheme Booklet (other than the Independent Expert's Report), then:
  - (i) if the relevant part of the Scheme Booklet is Bidder Information, Bidder (acting reasonably) will make the final determination as to the form and content of the Bidder Information; and
  - (ii) in any other case, Target (acting reasonably) will decide the form and content of that part of the Scheme Booklet.
- (b) Target and Bidder agree that the Scheme Booklet will contain a responsibility statement to the effect that:
  - (i) Target has prepared and is responsible for the Target Information contained in the Scheme Booklet, and none of Bidder or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Target Information;
  - (ii) Bidder has prepared and is responsible for the Bidder Information contained in the Scheme Booklet, and none of Target or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Bidder Information; and
  - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Bidder or its Related Bodies Corporate or their respective directors, officers or employees, nor Target or its Related Bodies Corporate or their respective directors, officers or employees, assumes any responsibility or liability for the accuracy or completeness of the Independent Expert's Report.

#### 4.5 Verification

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

#### 4.6 Conduct of Court proceeding

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

## 5 Conduct of business and transitional matters

### 5.1 Conduct of business

- (a) Subject to clause 5.1(c), from the date of this deed until the Implementation Date, and without limiting any other obligations of Target under this deed, Target must, and must procure each member of the Target Group to:
  - (i) use reasonable endeavours to:
    - (A) conduct its business and operations in the ordinary and usual course and consistent with the manner in which such business and operations have been conducted in the 12 months prior to the date of this deed;
    - (B) preserve relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them;
    - (C) ensure that all assets are maintained in the normal course consistent with past practice; and
    - (D) 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;
  - (ii) not take or fail to take any action that constitutes a Prescribed Occurrence or that could reasonably be expected to result in a Prescribed Occurrence;
  - (iii) procure that the working capital of the Target Group is managed in the ordinary and usual course of the business and operations of the Target Group and consistent with the manner in which such business and operations have been conducted in the 12 months prior to the date of this deed, including by ensuring that:
    - (A) receivables of the Target Group are collected in a manner consistent with the invoicing and collection policies and procedures of the Target Group in the 12 months prior to the date of this deed; and
    - (B) payables of the Target Group are paid in a manner consistent with the payment policies and procedures of the Target Group in the 12 months prior to the date of this deed; and
  - (iv) procure that each member of the Target Group:
    - (A) keeps available the services of its officers and key management personnel; and
    - (B) maintains and preserves relationships with parties with whom Target has material business dealings.

- (b) Subject to clause 5.1(c) but without limiting any other obligations of Target under this deed, Target must not, and must ensure that each member of the Target Group does not, from the date of this deed until the Implementation Date:
- (i) incur or enter into commitments involving capital expenditure of more than \$50,000 in respect of a single item or \$200,000 in the aggregate;
  - (ii) incur any additional Financial Indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs);
  - (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) make any change to its constitution;
  - (v) enter into, terminate or amend any Material Contract;
  - (vi) waive any Third Party default under a Material Contract;
  - (vii) enter into, terminate or amend any contract, joint venture, partnership or commitment (or any series of related contracts, joint venture, partnerships or commitments):
    - (A) involving total expenditure greater than \$200,000 individually or when aggregated with all such related contracts, joint ventures, partnerships or commitments;
    - (B) restraining any material member of the Target Group from competing with any person or conducting activities in any market; or
    - (C) with any related entity of any member of the Target Group (other than a member of the Target Group);
  - (viii) enter into any new financing arrangement, agreement or otherwise provide financial accommodation other than with members of the Target Group (irrespective of what form that accommodation takes), or amend the terms of any existing financing arrangement, agreement or instrument;
  - (ix) in respect of any single transaction or series of related or similar transactions, acquire, invest, or dispose of any business, assets, real property entity or undertaking (whether by way of a single transaction or series of related transactions) the value of which exceeds \$100,000;
  - (x) enter into any joint venture, partnership, unincorporated association or similar arrangement;
  - (xi) enter into any new employment or service agreement (other than for the purpose of replacing an existing agreement or arrangement on a materially consistent basis), or materially vary or terminate any employment or service



agreement in existence as at the date of this deed, in each case of any person with a total fixed remuneration of more than \$200,000 per annum (**Key Person**);

- (xii) materially increase the remuneration, compensation or benefits of, or otherwise materially vary the employment arrangements with, any of its directors, officers or other employees;
- (xiii) pay any bonus or incentive (whether cash or equity based) or issue any securities to, including any bonus or incentive payment in connection with the Transaction, any of its directors, officers or other employees (other than the issue of Target Shares on the valid exercise of such vested Options);
- (xiv) accelerate the rights of any of its directors, officers or any of its Key Persons to compensation or benefits of any kind (including under the Equity Incentive Plan);
- (xv) 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 deed or otherwise in accordance with current personnel practices;
- (xvi) pay or agree to pay a director, officer or other employee a bonus payment, termination or redundancy payment (including a 'golden parachute') or retention payment;
- (xvii) 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;
- (xviii) amend in any material respect any arrangement with its financial Advisers in respect of the transactions contemplated by this deed or pay or agree to pay any discretionary incentive fee to any Adviser for the provision of services to assist with the Transaction under any new or existing agreement or arrangement;
- (xix) agree to pay, declare or pay any dividends or any other form of distribution of profits or return of capital to its members (other than dividends payable to a Target Group member);
- (xx) enter into any swap, derivative or hedging agreement or arrangement;
- (xxi) commence, compromise, settle or offer to settle any legal proceedings, claim, investigation, arbitration or like proceeding (or series of related legal proceedings, claims, investigations, arbitrations or like proceedings), including any legal proceedings, claim, investigation, arbitration or like proceeding in relation to Tax, stamp duty or insurance claims, investigations or disputes, where the claimed or settlement amount (or, in the case of a series of related legal proceedings, claims, investigations, arbitrations or like proceedings, aggregate claimed or settlement amount) exceeds \$100,000 (other than as claimant in respect of the collection of trade debts arising in the ordinary course of business);
- (xxii) change any accounting method, practice or principle used by it (other than as a result of changes in, or the adoption of, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any of them);

- (xxiii) create, or agree to create, any Encumbrance over or declare itself the trustee of the whole or substantially all of its business or property;
- (xxiv) make any material Tax elections or change any material Tax methodologies applied by it;
- (xxv) settle or compromise any dispute, audit on inquiry in relation to Tax or duty or amends any tax return, other than in the ordinary course of its business;
- (xxvi) enter into, or resolve to enter into, a transaction with a related party of Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a Target Group member) as defined in section 228 of the Corporations Act;
- (xxvii) guarantee or indemnify the obligations of any other person, other than a member of the Target Group;
- (xxviii) cease, or threaten to cease, to carry on a substantial part of its business; or
- (xxix) authorise, agree, commit or resolve to do any of the matters set out in clause 5.1(b)(i) to clause 5.1(b)(xxviii) (inclusive), whether conditionally or otherwise.
- (c) Nothing in clauses 5.1(a) or 5.1(b) restricts any member of the Target Group from doing or not doing (or agreeing to do or not do) anything which:
- (i) is required by any applicable law or Government Agency;
  - (ii) is expressly required or permitted by this deed or the Scheme, in either case only to the extent expressly required or permitted under a Transaction Document or otherwise agreed in writing by Target and Bidder;
  - (iii) is a necessary, reasonable and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property), provided that the response does not have a material adverse impact on the expected future prospects or the operations of the Target Group and it is impractical to seek the approval of Bidder prior to giving effect to the response;
  - (iv) has been Fairly Disclosed in:
    - (A) the Disclosure Materials; or
    - (B) any documents lodged with ASX or ASIC within 12 months prior to the date of this deed which expressly contemplate that a relevant member of the Target Group will do or not do the relevant thing; or
  - (v) has been consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed).

## 5.2 Access

- (a) On and from the date of this deed until the Implementation Date, Target must use reasonable endeavours to procure that, subject to Bidder providing reasonable notice, Bidder is provided with reasonable access during normal business hours to the Target Group's information (including books and records), premises and senior management employees, and afford Bidder reasonable co-operation, where Bidder reasonably requests such access for the sole purposes of Bidder:
- (i) planning for implementation of the Scheme;



- (ii) developing and implementing plans for Target's operations and business following implementation of the Scheme; and
- (iii) any other purpose agreed between the parties in writing (each acting reasonably),

provided that Target will not be required to provide access under clause 5.2(a) to the extent that doing so would, in the reasonable opinion of Target (acting in good faith):

- (iv) cause unreasonable disruption to the Target Group's business;
  - (v) result in any member of the Target Group breaching any applicable law or requirement of any Government Agency, or any obligation of confidentiality owed to a third party; or
  - (vi) materially prejudice the interests of the Target Group (or any member thereof) or compromise legal privilege.
- (b) Nothing in this clause 5.2 requires Target to provide any information concerning its consideration of the Scheme or any Competing Proposal by the Target's directors or members of management.
  - (c) Any information provided by Target pursuant to this clause 5.2 will be subject to the Confidentiality Agreement.

### 5.3 Implementation Committee

- (a) On and from the date of this deed, the parties agree to establish a committee (**Implementation Committee**) initially comprising 2 representatives of each of Target and Bidder.
- (b) The role of the Implementation Committee will be to act as a forum for discussion and planning in respect of the following:
  - (i) the performance of the business of Target;
  - (ii) implementation of the Scheme;
  - (iii) employee retention and incentivisation and stakeholder engagement and communications;
  - (iv) the process referred to in clause 5.4; and
  - (v) the progress of the matters contemplated by, and compliance by Target with Target's obligations under, clause 5.5.
- (c) Each party must ensure that its representatives on the Implementation Committee act in good faith in their capacity as members of the Implementation Committee with a view to fulfilling the role and objectives of the Implementation Committee (to the extent they can reasonably do so).
- (d) The Implementation Committee will meet at such times and places as agreed between the members of the Implementation Committee from time to time (and at a minimum at least fortnightly). Meetings may be held via telephone, video or any other technology that permits each member to communicate with every other member (or any combination of these technologies).
- (e) The members of the Implementation Committee may agree to invite other persons to attend meetings of the Implementation Committee from time to time.

- (f) From time to time, certain members of the Implementation Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Implementation Committee to discuss and progress matters considered or plans developed by the Implementation Committee.
- (g) The parties acknowledge and agree that:
- (i) the Implementation Committee is a discussion and planning forum only, and the members of the Implementation Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party; and
  - (ii) nothing in this clause 5.3:
    - (A) gives Bidder any rights as to the decision making of any Target Group member or its business, or gives Bidder any rights to undertake further due diligence investigations;
    - (B) in any way, or to any extent, limits or regulates the Target's conduct of the business of the Target Group;
    - (C) requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties; or
    - (D) requires a party to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law.

#### 5.4 Change of control provisions

As soon as practicable after the date of this deed, Bidder and Target must seek to identify any change of control or unilateral termination rights or similar provisions in any leases or contracts to which Target or another Target Group member is party that would be triggered by the implementation of the Transaction (**Change of Control Requirements**). In respect of those contracts, the parties agree as follows:

- (a) Target and Bidder will, each acting reasonably, agree a proposed course of action to obtain any consents or waivers required in accordance with the terms of any identified Change of Control Requirements and then Target will, in the manner and on the terms agreed with Bidder in writing, initiate contact with the relevant counterparties and request that they provide any consents or waivers required;
- (b) in respect of any contracts containing Change of Control Requirements, the parties agree as follows:
  - (i) Target must, as soon as practicable after the date of this deed, write to the counterparties to these contracts to request that they provide consent in relation to the Transaction; and
  - (ii) Target must use reasonable endeavours to obtain the consents referred to in clause 5.4(b)(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 Target:
    - (A) cooperating with, and doing all things reasonably requested by, Target, Bidder or the counterparty to a material contract;
    - (B) promptly providing any information reasonably required by a counterparty to a material contract; and

- (C) making 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;
- (c) Bidder must cooperate with, and provide reasonable assistance to, Target to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties and making officers and senior employees available, on reasonable notice, to meet with counterparties where reasonably necessary, provided that nothing in this clause 5.4(c) requires Bidder to:
- (i) incur material external expense or make any material payment; or
  - (ii) agree to provide or grant any additional guarantee or security to any counterparty of a contract or lease, in each case which is not acceptable to Bidder (acting reasonably);
- (d) Bidder must not, and must procure that its Affiliates and Representatives do not, contact or hold discussions with any counterparty to a material contract from whom a consent or waiver in respect of a Change of Control Requirement is required without the prior written consent of the Target (which is not to be unreasonably withheld or delayed); and
- (e) notwithstanding any other provision of this deed, but without limiting clause 10.1(c) and otherwise provided that Target has complied in all material respects with this clause 5.4, the failure to obtain any third party consent or waiver in respect of a Change of Control Requirement will not, by itself, constitute a breach of this deed by Target nor a breach of any Condition. Without limiting clause 10.1(c) and otherwise provided that Target has complied in all material respects with this clause 5.4, any such failure, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## 5.5 Treatment of Target Convertible Securities and Target Cash Incentives

- (a) **(Warrants)** Notwithstanding any other provision of this deed:
- (i) subject to clause 5.5(a)(ii), Target and Bidder agree that the Warrants will be treated in the manner agreed between Target and Bidder in writing on the date of this deed; and
  - (ii) Target must ensure that Target and each holder of Warrants has taken all necessary steps by 8.00am on the Second Court Date (including by executing all necessary documents) required to procure that the Warrants will be, conditional on the Scheme becoming Effective, cash-settled and cancelled, lapsed and/or terminated with effect on or prior to the Implementation Date.
- (b) **(Options)** Notwithstanding any other provision of this deed:
- (i) subject to clause 5.5(b)(ii), Target and Bidder agree that the Options and any Target Equity Incentives or other Target equity incentives (including future grants of equity incentives, securities, options and/or other incentives) will be treated in the manner agreed between Target and Bidder in writing on the date of this deed; and

- (ii) Target must ensure that it has taken all necessary steps by 8.00am on the Second Court Date (including by executing all necessary documents) required to procure that all Options and Target Equity Incentives that are not Target Shares or Options will be, conditional on the Scheme becoming Effective, either:
- (A) cash-settled and cancelled, lapsed and/or terminated with effect on or prior to the Scheme Record Date; or
  - (B) converted into Target Shares such that there are no outstanding Options or Target Equity Incentives which are not Target Shares on issues as at the Scheme Record Date.
- (c) **(Target Cash Incentives)** Notwithstanding any other provision of this deed:
- (i) subject to clause 5.5(c)(ii), Target and Bidder agree that the Target Cash Incentives will be treated in the manner agreed between Target and Bidder in writing on the date of this deed; and
  - (ii) Target must ensure that Target has taken all necessary steps by 8.00am on the Second Court Date (including by executing all necessary documents) required to procure that the Target Cash Incentives will be, conditional on the Scheme becoming Effective, dealt with and otherwise treated, with effect on or prior to the Implementation Date, in the manner agreed between Target and Bidder in writing on the date of this deed.
- (d) **(ASX waivers)** As soon as reasonably practicable after the date of this deed, Target must apply for a waiver from ASX Listing Rule 6.23 (to the extent required) in connection with any actions to be taken by Target under this clause 5.5.

## 5.6 Resignation of directors and officeholders

- (a) Subject to implementation of the Scheme in accordance with its terms including Bidder having paid the Scheme Consideration, Target must procure that, with effect on and from the Implementation Date:
- (i) those persons nominated by Bidder are appointed as officeholders of Target Group members (including as directors on the Target Board), subject to such persons having provided to the relevant member(s) of the Target Group duly signed consents to act as a director, company secretary or public officer (as applicable) of the relevant member(s) of the Target Group; and
  - (ii) those persons nominated by Bidder in writing:
    - (A) resign as officeholders of the relevant Target Group member(s); and
    - (B) unconditionally and irrevocably release the Target Group from any claims they may have against the Target Group,
- in each case, in accordance with the relevant company's constitution, the Corporations Act and the ASX Listing Rules.
- (b) Any nomination by Bidder under clause 5.6(a)(i) or 5.6(a)(ii) must be made by written notice to Target, and such notice must be given 3 Business Days before the Implementation Date.
- (c) Nothing in clause 5.6(a) requires any director of a member of the Target Group to forego or prejudice any rights he or she may have under any deed of access and indemnity or policy of directors and officers insurance.

## 5.7 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and being implemented, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:
  - (i) procure that Target and each member of the Target Group complies with any deeds of indemnity, access and insurance (or similar) entered into by them in favour of their respective directors and officers from time to time, including to ensure that the D&O Run-off Policy obtained in accordance with clause 5.8 is established and maintained for a period of seven years from the retirement date of each applicable director and officer, and Target may, at its election, pay any reasonable amounts necessary to ensure such maintenance upfront and prior to the implementation of the Scheme; and
  - (ii) for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain rules which are no less favourable overall than the rules contained in those constitutions at the date of this deed 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.
- (b) The undertakings contained in clause 5.7(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) Target receives and holds the benefit of clause 5.7(a) to the extent it relates to the other Target Indemnified Parties as trustee for them.

## 5.8 D&O insurance

- (a) Bidder acknowledges that:
  - (i) notwithstanding any other provision of this deed, Target may, with the prior written consent of Bidder (not to be unreasonably withheld or delayed to the extent that the gross premium and related costs payable does not exceed the amount agreed between Bidder and Target on or about the date of this deed), prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to the period ending 7 years after the Implementation Date (**D&O Run-off Policy**) on the following basis:
    - (A) the same amount of coverage;
    - (B) the same deductible or excess; and
    - (C) otherwise on terms that are equivalent,

as those provided under the directors' and officers' insurance policy maintained by the Target as at the date of this deed (but which for the avoidance of doubt may be at a higher premium than such directors' and officers' insurance policy; and
  - (ii) any actions to facilitate that insurance or in connection with such insurance will not, by themselves, constitute a breach of a Condition or a breach of any provision of this deed, and will be disregarded when assessing the operation of any other part of this deed.
- (b) From the Implementation Date, Target must not:
  - (i) vary or cancel the D&O Run-Off Policy; or

- (ii) unless required under the D&O 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.
- (c) Nothing in this clause 5.8 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 D&O Run-Off Policy.

## 5.9 W&I Deed and W&I Insurance Policy

- (a) Target acknowledges and agrees that Target must:
  - (i) negotiate in good faith with Bidder and use all reasonable endeavours to enter into the W&I Deed with Bidder and/or another member of the Bidder Group (such W&I Deed to be on terms acceptable to the Bidder and Target, each acting reasonably), as soon as practicable following the date of this deed and by no later than 29 February 2024 (or such other time agreed by Target and Bidder in writing); and
  - (ii) cooperate with Bidder, and provide all reasonable assistance requested by Bidder, in connection with Bidder obtaining the W&I Insurance Policy and otherwise procuring the issue of the W&I Insurance Policy to Bidder and/or another member of the Bidder Group, including (but not limited to):
    - (A) providing to Bidder and its Representatives such documents and information concerning Target, the Target Shareholders (to the extent such information is known by Target) and the business, employees, assets and properties of the Target Group for the purposes of assisting Bidder and its Representatives to obtain the W&I Insurance Policy, including any information or documents that are requested by or on behalf of any relevant insurer or underwriter in respect of the W&I Insurance Policy for the purposes of the underwriting of the W&I Insurance Policy;
    - (B) promptly responding to requests for information made by or on behalf of any relevant insurer or underwriter in connection with Bidder obtaining the W&I Insurance Policy and otherwise procuring the issue of the W&I Insurance Policy to Bidder and/or another member of the Bidder Group as soon as practicable after the date of this deed; and
    - (C) do all such other things reasonably requested by Bidder and/or any relevant insurer or underwriter in respect of the W&I Insurance Policy that are necessary or otherwise reasonably required by Bidder in connection with Bidder obtaining the W&I Insurance Policy and otherwise procuring the issue of the W&I Insurance Policy to Bidder and/or another member of the Bidder Group.
- (b) Bidder acknowledges and agrees that all costs payable to the relevant insurer(s) and/or broker in respect of the W&I Insurance Policy (including the gross premium payable plus any premium taxes and fees and charges (including brokerage) in respect of the W&I Insurance Policy) will be paid by Bidder.
- (c) Notwithstanding any other provision of this deed, but without limiting clause 10.1(c) and otherwise provided that Target has complied in all material respects with this clause 5.9:
  - (i) the failure of the Target to enter into the W&I Deed will not, by itself, constitute a breach of this deed by Target nor a breach of any Condition; and



- (ii) any such failure, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## 6 Exclusivity

### 6.1 Cease discussions

- (a) Target represents and warrants to Bidder that, as at the date of this deed:
  - (i) it is not party to any agreement with;
  - (ii) neither Target nor any of its Representatives is in any negotiations, discussions or other communications with; and
  - (iii) Target and its Representatives have ceased any existing negotiations, discussions or other communication with, and have ceased to provide or make available any non-public information in relation to the Target Group to, any person in relation to, or which could reasonably be expected to lead to, an actual, proposed or potential Competing Proposal (other than, for the avoidance of doubt, the discussions with Bidder and its Representatives in respect of the Transaction).
- (b) On the date of this deed, Target must and must procure that each of its Representatives do not terminate, waive, amend or modify any provision of any existing confidentiality agreement relating to any possible Competing Proposal or any standstill agreement to which any member of the Target Group is party.
- (c) As at the date of this deed, Target has requested (or will do so within 5 Business Days of the date of this deed) 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 any person at any time within the 12 months prior to the date of this deed where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal.

### 6.2 No shop

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

- (a) solicits, invites, facilitates, encourages or initiates (including by the provision of Non-public Information to any Third Party) any enquiries, expressions of interest, offers, proposals, negotiations, discussions or other communication by any Third Party:
  - (i) in relation to any actual, proposed or potential Competing Proposal;
  - (ii) with a view to obtaining any actual, proposed or potential Competing Proposal; or
  - (iii) that may be reasonably expected to encourage or lead to any actual, proposed or potential Competing Proposal; or
- (b) communicates to any Third Party any intention to do anything referred to in clause 6.2(a).

**6.3 No talk**

- (a) Subject to clause 6.6, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not, directly or indirectly:
  - (i) respond to, facilitate, participate in or continue any negotiations or discussions with any Third Party with respect to any enquiry, expression of interest, offer, proposal or discussion, negotiation or other communication by any Third Party in relation to, or which would reasonably be expected to encourage or lead to the making of, a Competing Proposal; or
  - (ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into any agreement, arrangement or understanding regarding any actual, proposed or potential Competing Proposal,

even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by Target, any other Target Group member, or a Representative of a Target Group member or the relevant Third Party has publicly announced the Competing Proposal.

- (b) Subject to clause 6.6, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives does not, directly or indirectly communicate to any Third Party an intention to do anything referred to in clause 6.3(a).

**6.4 No due diligence**

- (a) Subject to clause 6.6, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives does not, directly or indirectly:
  - (i) solicit, invite, initiate, or encourage, or (subject to clause 6.6) facilitate or permit, any person (other than Bidder) to undertake due diligence investigations in respect of the Target Group, or any of their businesses, assets or affairs, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal;
  - (ii) disclose or otherwise provide or make available any Non-Public Information about the business, assets or affairs of the Target Group to a Third Party or provide access to any Target officers or employees to a Third Party (other than a Government Agency) in connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the formulation, development, finalisation, receipt or announcement of, any actual, proposed or potential Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group) whether by that Third Party or another person; or
  - (iii) communicate to any Third Party an intention to do anything referred to in clause 6.4(a)(i),

provided that nothing in this clause 6.4 prevents or restricts the Target or any of its Representatives from responding to an enquiry, expression of interest, offer or proposal by a Third Party to make, or which may reasonably be expected to lead to the making of, a Competing Proposal, other than as a result of a breach of clause 6, to merely:

- (iv) acknowledge receipt; and/or



- (v) advise that Third Party that the Target is bound by the provisions of this clause 6.4 and is only able to engage in negotiations, discussions or other communications if the fiduciary carve out in clause 6.6 applies.
- (b) If Target proposes that any non-public information be provided to a Third Party in reliance on clause 6.6, 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 a Representative of Bidder).

## 6.5 Notification of approaches

- (a) During the Exclusivity Period, Target must as soon as reasonably practicable (and in any event within 24 hours) notify Bidder in writing if Target or any of its Representatives becomes aware of any:
  - (i) negotiations, discussions or other communications, or approach, or any other contact with the Target or any of its Representatives in relation to an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal;
  - (ii) approach, enquiry or proposal made to, or received by, the Target or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal, or that may reasonably be expected to lead to any actual, proposed or potential Competing Proposal (or which is otherwise, of itself, a Competing Proposal);
  - (iii) any request made by a Third Party to the Target or any of its Representatives for any Non-public Information; or
  - (iv) the provision by Target or any of its Representatives of any Non-public Information concerning the business or operations of Target or the Target Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal, or that may reasonably be expected to lead to any actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise.

- (b) A notification given under clause 6.5(a) must include all material details of the actual, proposed or potential Competing Proposal (including the identity of the person who made the relevant approach, inquiry or proposal, price and form of consideration, proposed timing, proposed deal protection provisions, financing, any break or reimbursement fee and any conditions precedent) to the extent known by Target and its Representatives.
- (c) For the avoidance of doubt nothing in this clause 6.5 obliges Target to notify Bidder of a Competing Proposal until after the Target Board has determined in accordance with clause 6.6 whether clauses 6.3 and 6.4 apply with respect to that Competing Proposal.

## 6.6 Fiduciary exception

Clauses 6.3 and 6.4 do not apply to the extent that they restrict Target or the Target Board from taking or omitting to take any action with respect to a bona fide, written actual Competing Proposal which was not solicited, invited, encouraged or initiated in contravention of clause 6.2, provided that the Target Board has determined (after consultation with its financial and legal Advisers) that:

- (a) the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal; or
- (b) after receiving written advice from Target's reputable external Australian legal advisers specialising in the area of corporate law, that compliance with clauses 6.3 and 6.4 (as applicable) would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of any member of the Target Board.

## 6.7 Matching right

- (a) Without limiting clauses 6.1 to 6.5 (inclusive), during the Exclusivity Period, Target must:
  - (i) procure that no Target Director withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation that Target Shareholders vote in favour of the resolution to approve the Scheme, publicly recommends any actual, proposed or potential Competing Proposal (or recommend against the Transaction), or otherwise publicly supports any actual, proposed or potential Competing Proposal, and
  - (ii) not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) for the implementation of any actual, proposed or potential Competing Proposal (which, for the avoidance of doubt, does not include a confidentiality agreement or similar arrangement),

unless:

  - (iii) the Target Board has made the determination contemplated by clause 6.6;
  - (iv) Target has provided Bidder with the notice stating that it is given for the purposes of this clause 6.7 and setting out all material terms and conditions of the Competing Proposal known by Target and its Representatives, including all information that would be required by clause 6.5(b);
  - (v) Target has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 6.7(a)(iv) to announce or formally provide to Target a matching or superior proposal or other counter-proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counterproposal**); and
  - (vi) within 5 Business Days of receiving notice from Target under this clause 6.7, Bidder does not make a Bidder Counterproposal that the Target Board determines, acting in good faith, would produce an equivalent or superior outcome for Target Shareholders (as a whole) as compared to the outcome that would be produced by the Competing Proposal, taking into account all terms and conditions and other aspects of the Bidder Counterproposal and the Competing Proposal respectively.
- (b) Target acknowledges and agrees that each new Competing Proposal or successive material modification of a Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under clause 6.7(a).

- (c) If Bidder makes a Bidder Counterproposal before the deadline specified in clause 6.7(a)(v), Target must procure that the Target Board considers the Bidder Counterproposal and determines whether, acting reasonably and in good faith, the Bidder Counterproposal would provide an equivalent or superior outcome to Target Shareholders as a whole compared with the Competing Proposal. Following that determination, Target must:
- (i) procure that the Target Board promptly, and in any event within 3 Business Days, notifies Bidder of the determination in writing, stating reasons for that determination; and
  - (ii) if the determination is that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole as compared to the outcome that would be produced by the Competing Proposal, then Target and Bidder must each use all reasonable endeavours to agree the transaction documentation required to implement the Bidder Counterproposal as soon as reasonably practicable and Target must use its best endeavours to procure that the Target Directors recommend the Bidder Counterproposal to Target Shareholders and not recommend the applicable Competing Proposal.
- (d) Despite any other provision in this deed, a statement by Target, the Target Board or any Target Director to the effect that:
- (i) the Target Board has determined that a Competing Proposal is or may be a Superior Proposal and has commenced the matching right process set out in this clause 6.7; or
  - (ii) Target Shareholders should take no action pending the completion of the matching right process set out in this clause 6.7,
- does not of itself:
- (iii) constitute an adverse change, withdrawal or adverse modification of the recommendation of the Scheme and/or the Recommendation or Voting Intention or is otherwise a recommendation or endorsement of a Competing Proposal;
  - (iv) contravene this deed;
  - (v) give rise to an obligation to pay the Break Fee under clause 7; or
  - (vi) give rise to a termination right under clause 10.2,

provided that in each case, that the Target Board publicly re-affirms its Recommendation in favour of the Transaction when making any such statement.

## 6.8 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 6 or any part of it:
- (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Target Board;
  - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
  - (iii) was, or is, or would be, unlawful for any other reason,

then, to that extent (and only to that extent) Target will not be obliged to comply with that provision of clause 6.

- (b) The parties:
  - (i) must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 6.8; and
  - (ii) subject to clause 6.8(c), agree that if a Third Party makes an application to the Takeovers Panel or a court for or in relation to a declaration or determination regarding any provision of this clause 6, then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such declaration or determination should be made.
- (c) The Target is not obliged to make submissions in the course of proceedings of the kind referred to in clause 6.8(b)(ii) where the Target Board, after receiving written advice from Target's reputable external Australian legal advisers specialising in the area of corporate law, has determined that to do so would be contrary to the fiduciary or statutory duties of the Target Directors.

## 6.9 Normal provision of information

Nothing in this clause 6 prevents Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers in the ordinary course of business;
- (d) engaging with Target Shareholders in the ordinary course of business and consistent with past practice;
- (e) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
- (f) making presentations or provide information to brokers, portfolio investors, joint venture partners or potential joint venture partners, analysts and other third parties in the ordinary course of business consistent with the 12 months prior to the date of this deed or for the purpose of promoting the merits of the Transaction,

provided that the provision of information contemplated by this clause 6.9:

- (g) is not made for the purposes of directly or indirectly soliciting, inviting, facilitating, encouraging or initiating a Competing Proposal; or
- (h) would not otherwise result in or constitute, a breach of any of clauses 6.2 to 6.4.

## 7 Break fees

### 7.1 Background

This clause 7 has been agreed to in circumstances where:

- (a) each party believes it and its shareholders will derive significant benefits from the implementation of the Scheme;
- (b) each party has incurred and will further incur significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
- (c) each party has requested that provision be made for the payment outlined in clause 7.2 or 7.3 (as applicable), and would not have entered into this deed had such provision not been made;
- (d) the Target Board believes that:
  - (i) it is reasonable and appropriate to agree to pay the Break Fee to secure Bidder's entry into this deed; and
  - (ii) the Break Fee represents a genuine and reasonable estimate of costs that would be incurred by Bidder if the Scheme is not implemented;
- (e) Bidder believes that:
  - (i) it is reasonable and appropriate to agree to pay the Reverse Break Fee to secure Target's entry into this deed; and
  - (ii) the Reverse Break Fee represents a genuine and reasonable estimate of costs that would be incurred by Target if the Scheme is not implemented; and
- (f) each party has received separate legal advice in relation to this deed and the operation of this clause 7.

### 7.2 Payment of Break Fee

Subject to clauses 7.5 and 7.6, Target must pay Bidder the Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Bidder, if any of the following events occur:

- (a) during the Exclusivity Period, any Target Director:
  - (i) fails to recommend the Scheme in the manner described in clause 2.4(b)(i)(A);
  - (ii) changes or withdraws, or adversely modifies or adversely qualifies, their Recommendation that Target Shareholders vote in favour of the resolution to approve the Scheme or otherwise makes a public statement indicating that they no longer support the Scheme;
  - (iii) fails to vote, or procure the voting of, any Target Shares in which they have a Relevant Interest at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting; or
  - (iv) recommends, supports or endorses a Competing Proposal,

in each case provided that Bidder has terminated this deed in accordance with clause 10.2 and except where:

- (v) the Independent Expert does not conclude in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Scheme is in the best interests of Target Shareholders (other than where such conclusion is the result of a Competing Proposal);
- (vi) a court of competent jurisdiction or ASIC or the Takeovers Panel requires that a majority of the Target Directors abstain or withdraw from making a recommendation in relation to the Scheme; or
- (vii) prior to termination by Bidder, Target was entitled to terminate this deed in accordance with clause 10.1(c) and has given the appropriate termination notice to Bidder.

For the avoidance of doubt, 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 6.7 will not, by itself, give rise to an obligation to pay the Break Fee to Bidder provided that the Target Board publicly re-affirms its Recommendation in favour of the Transaction when making any such statement;

- (b) Bidder validly terminates this deed in accordance with clause 10.1(c); or
- (c) a Competing Proposal of any kind is publicly announced (whether or not such proposal is stated to be subject to any pre-conditions) whether before, on or after the date of this deed, and, within 12 months after such announcement, a Third Party (either alone or together with any Associates):
  - (i) completes, or completes substantially in the terms described in the public announcement, a Competing Proposal of the kind referred to in any of the paragraphs (a) (but only where this has occurred as a result of an issue of new shares by the Target) (b), (c) and (d) of the definition of Competing Proposal; or
  - (ii) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, 50% or more of Target Shares or acquires (directly or indirectly) an interest in 50% or more by value the business or assets of the Target Group.

### 7.3 Payment of Reverse Break Fee

Provided that Bidder is not entitled to terminate this deed in accordance with clause 10.1 at the time of the relevant event, Bidder must pay Target the Reverse Break Fee, without set-off or withholding and within 5 Business Days after receipt of a written demand from Bidder, if any of the following events occur:

- (a) the Scheme becomes Effective but Bidder does not pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll and such breach is not remedied within 2 Business Days of written notice from Target to Bidder or such other later date as agreed by the parties; or
- (b) Target validly terminates this deed in accordance with clause 10.1(c).

#### 7.4 Nature of payment

The payment by a party under clause 7.2 or 7.3 is an amount to compensate the other party for the following costs and expenses:

- (a) external advisory costs (excluding success fees);
- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses;
- (d) reputational damage associated with a failed transaction and the implications of that damage to a party's business; and
- (e) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed.

#### 7.5 Qualifications to Break Fee

- (a) No amount is payable by Target under this clause 7 if the Scheme becomes Effective.
- (b) This clause 7 does not impose an obligation on Target to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
  - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (ii) is determined to be unlawful or held to be unenforceable by a court.
- (c) If the Break Fee has been paid by Target and clause 7.5(a) applies, Bidder must reimburse the Break Fee as directed by Target within 10 Business Days after receipt of a written demand for reimbursement from Target.

#### 7.6 Other claims

- (a) Notwithstanding any other provision of this deed:
  - (i) the maximum aggregate amount which Target may be required to pay in relation to this deed (including any breach of this deed by Target) is the Break Fee, and in no event will the aggregate liability of Target under or in connection with this deed exceed the Break Fee, other than in the case of fraud or wilful default;
  - (ii) where the Break Fee is paid to Bidder in accordance with clause 7.2, neither Bidder nor any of its Affiliates may make any claim for damages, loss, liability, compensation, payments, fees, expenses or reimbursements against Target or any other Target Indemnified Party (other than a claim under clause 7.2) in connection with:
    - (A) the event that gave rise to the right to demand the payment of the Break Fee; nor
    - (B) any other event, matter or circumstance that may give rise to a separate right to the Break Fee or that constitutes or may constitute a breach of this deed;



- (iii) subject to clause 7.7, the maximum aggregate liability of Bidder for any claims under this deed is the Reverse Break Fee and in no event will the aggregate liability of Bidder for claims under or in connection with this deed exceed the Reverse Break Fee, other than in the case of fraud or wilful default; and
- (iv) subject to clause 7.7, where the Reverse Break Fee is paid to Target in accordance with clause 7.3, no Target Group member may make any claim for damages, loss, liability, compensation, payments, fees, expenses or reimbursements against Bidder or any its Affiliates (other than a claim under clause 7.3) in connection with:
  - (A) the event that gave rise to the right to demand the payment of the Reverse Break Fee; nor
  - (B) any other event, matter or circumstance that may give rise to a separate right to the Reverse Break Fee or that constitutes or may constitute a breach of this deed.
- (b) The Reverse 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 7.3, it must be refunded by Target to Bidder.
- (c) The parties acknowledge that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of a party to demand payment of the Break Fee or Reverse Break Fee (as the case may be).
- (d) Any accrued obligations under this clause 7 survive termination of this deed.

## **7.7 Claims under the Deed Poll**

Nothing in clause 7.6 or otherwise in this deed will limit Bidder's liability under or in connection with a breach of the Deed Poll.

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## **8 Warranties**

### **8.1 Target Warranties**

Target represents and warrants to Bidder each of the Target Warranties is true and correct, and will promptly advise Bidder in writing if it becomes aware of any fact, matter or circumstance which constitutes, or is reasonably likely to constitute, or result in, a breach of any of the representations or warranties given by it under this clause 8.1.

### **8.2 Target's indemnity**

Target agrees to indemnify Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Indemnified Parties) against, and must pay on demand the amount of, any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Warranties.

### **8.3 Bidder's representations and warranties**

Bidder represents and warrants to Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that each of the Bidder

Warranties is true and correct, and will promptly advise Target in writing if it becomes aware of any fact, matter or circumstance which constitutes, or is reasonably likely to constitute, or result in, a breach of any of the representations or warranties given by it under this clause 8.3.

#### **8.4 Bidder's indemnity**

Bidder agrees with Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify Target and each of the Target Indemnified Parties against, and must pay on demand the amount of, any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Target or any of the other Target Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Warranties.

#### **8.5 Qualifications on Target Warranties**

- (a) The Target Warranties and the indemnity in clause 8.2 are each subject to matters that:
  - (i) are required or permitted by a Transaction Document or any transaction contemplated by a Transaction Document;
  - (ii) have been Fairly Disclosed in the Disclosure Materials;
  - (iii) have been Fairly Disclosed in any documents lodged with ASIC by or on behalf of the Target in the 12 months prior to the date of this deed;
  - (iv) have been Fairly Disclosed in Target's announcements to ASX, or a publicly available document which would be disclosed in a search of ASIC's records or the PPS Register (or equivalent records or registers in another jurisdiction) or the public records maintained by any courts), in relation to a Target Group member, in each case in the 12 months prior to the date of this deed;
  - (v) are required by any applicable law or regulation or by a Government Agency; or
  - (vi) are within the actual knowledge of Bidder as at the date of this deed, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which each member of the Bidder Deal Team is actually aware as at the date of this deed.
- (b) Any matters in this deed that are subject to the awareness, knowledge or belief of Target are given solely by reference to the actual knowledge of the following individuals as at the date of this deed:
  - (i) Johannes Risseeuw;
  - (ii) Christian Damstra;
  - (iii) Paul Burrows; and
  - (iv) Damien Camilleri.

#### **8.6 Qualifications on Bidder Warranties**

- (a) The Bidder Warranties and the indemnity in clause 8.4 are each subject to matters that are required or permitted by a Transaction Document or any transaction contemplated by a Transaction Document.

- (b) Any matters in this deed that are subject to the awareness, knowledge or belief of the Bidder are given solely by reference to the actual knowledge of each member of the Bidder Deal Team as at the date of this deed.

## **8.7 Survival of Warranties**

Each Warranty:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) subject to this deed, 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 deed.

## **8.8 Survival of indemnities**

Each indemnity in this deed (including those in clauses 8.2 and 8.4):

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

## **8.9 Timing of Warranties**

Each Warranty is given:

- (a) at the date of this deed;
- (b) at the date the Scheme Booklet is despatched to Target Shareholders; and
- (c) at 8:00am on the Second Court Date and at the Effective Date,

unless such Warranty is expressed to be given at a particular time, in which case it is given at that time.

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# **9 Releases**

## **9.1 Release of Target Indemnified Parties**

- (a) Subject to clause 9.1(b), Bidder releases any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, and agrees with Target that it will not make any claim (of whatsoever nature), against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this deed in connection with:
  - (i) the Target's execution or delivery of this deed;
  - (ii) any breach of any covenant, representation or warranty given by Target under this deed;

- (iii) any disclosures or information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or
- (iv) any failure to provide information in connection with this deed or the Scheme,

except where such Target Indemnified Party has engaged in fraud or wilful misconduct.

- (b) The releases in clause 9.1(a) are subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Target receives and holds the benefit of clause 9.1(a) as trustee for each other Target Indemnified Parties.
- (d) Nothing in this clause 9.1 limits Bidder's rights to terminate this deed under clause 10 or its rights under clause 7.

## 9.2 Release of Bidder Indemnified Parties

- (a) Subject to clause 9.2(b), Target releases any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, and agrees with Bidder that it will not make any claim (of whatsoever nature), against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed in connection with:
  - (i) the Bidder's execution or delivery of this deed;
  - (ii) any breach of any covenant, representation or warranty given by Bidder under this deed;
  - (iii) any disclosures or information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iv) any failure to provide information in connection with this deed or Scheme, except where such Bidder Indemnified Party has engaged in fraud.
- (b) The releases in clause 9.2(a) are subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 9.2(a) as trustee for each other Bidder Indemnified Parties.
- (d) Nothing in this clause 9.2 limits Target's rights to terminate this deed under clause 10 or its rights under clause 7.

## 10 Termination

### 10.1 Termination by Target or Bidder

Target or Bidder may terminate this deed:

- (a) in the circumstances set out in, and in accordance with, clause 3.5 (provided that the party purporting to terminate this deed has complied with its obligations in clause 3.5 to the extent applicable);

- (b) if the Effective Date for the Scheme has not occurred on or before the End Date; or
- (c) any time before 8:00am on the Second Court Date if Bidder (where Target is the terminating party) or Target (where Bidder is the terminating party) commits a material breach of this deed (including the Warranties), provided that:
  - (i) the relevant breach is material in the context of the Scheme taken as a whole;
  - (ii) the terminating party has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate this deed; and
  - (iii) the relevant circumstances have not been remedied to the reasonable satisfaction of the terminating party within 5 Business Days from the date such notice is received by the other party (or any shorter period ending at 5:00pm on the Business Day immediately before the Second Court Date) (in which case termination under this clause 10.1(c) will take effect at the expiry of that period).

## 10.2 Termination by Bidder

Bidder may terminate this deed by notice in writing to Target at any time before 8:00am on the Second Court Date if:

- (a) any Target Director:
  - (i) fails to recommend the Scheme in the manner described in clause 2.4(b)(i)(A);
  - (ii) changes or withdraws, or adversely modifies or adversely qualifies, their Recommendation that Target Shareholders vote in favour of the resolution to approve the Scheme;
  - (iii) makes a public statement to the effect that he or she no longer supports the Scheme or recommends the Transaction; or
  - (iv) recommends, endorses or supports a Competing Proposal (excluding any statement to the effect that no action should be taken by Target Shareholders pending assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 6.7),

in each case, for any reason and whether or not permitted to do so under this deed.

## 10.3 Termination by Target

Target may terminate this deed by notice in writing to Bidder at any time before 8:00am on the Second Court Date if clause 2.4(c)(i) applies and a majority of Target Directors have adversely changed or withdrawn, or adversely modified or adversely qualified, their Recommendation that Target Shareholders vote in favour of the resolution to approve the Scheme, provided that, if required to do so under clause 7, the Target has paid the Break Fee in accordance with clause 7.

## 10.4 Qualification

A failure to recommend or a change, withdrawal or modification of a recommendation due to a court or Government Agency requirement or request that a Target Director abstains from making a recommendation will be disregarded under clauses 10.2 and 10.3.

## 10.5 Termination by written agreement

This deed is terminable if agreed to in writing by Bidder and Target.

## 10.6 Effect of termination

If this deed is terminated in accordance with this clause 10, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 10 and clauses 1, 7, 8, 9 and 12 through 14 (inclusive) will survive termination; and
- (b) each party will retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

# 11 Public announcements

## 11.1 Public announcement of Scheme

Immediately after execution of this deed, Target must issue a public announcement in a form agreed between the parties.

## 11.2 Other disclosure

Subject to clause 11.3, no public announcement or disclosure of or in relation to the Transaction may be made by a Target Group member or Bidder Group Member other than in a form approved by each party in writing (such approval not to be unreasonably withheld or delayed) (**Proposed Public Announcement**). A party must provide the other party with a draft copy of any Proposed Public Announcement as soon as reasonably practicable before it is proposed that such Proposed Public Announcement is made, and must give the other party a reasonable opportunity to comment on the form and content of the draft Proposed Public Announcement and must take into account all reasonable comments from that party on the draft. The obligations in this clause 11.2 do not apply to any announcement or disclosure in connection with an actual, proposed or potential Competing Proposal.

## 11.3 Required disclosure

- (a) Despite any provision of the Confidentiality Agreement, where a party is required by applicable law or the ASX Listing Rules to make any announcement or to make any disclosure in connection with the Transaction, or any other transaction the subject of this deed or the Scheme, it may do so despite clause 11.2.
- (b) Despite any provision of the Confidentiality Agreement, before any disclosure is made in reliance on clause 11.3(a), to the extent reasonably practicable and permitted by the relevant law:
  - (i) the party required to make the disclosure (**Disclosing Party**) must use best endeavours to notify the other party as soon as reasonably practicable after it becomes aware that disclosure is required; and
  - (ii) the Disclosing Party must use best endeavours to give the other party an opportunity to comment on the proposed form of the disclosure and amend any factual inaccuracy, and consider in good faith any other comments of the other party on the form of the disclosure, other than where such disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.

## 12 Duty, costs and expenses

### 12.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed or the Scheme or any transaction effected or steps taken under this deed or the Scheme; and
- (b) indemnifies Target against any liability arising from any failure by Bidder to comply with clause 12.1(a).

### 12.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of the Transaction.

## 13 GST

- (a) In this clause 13, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that legislation.
- (b) If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 13(b) (**GST exclusive consideration**) is increased by an amount (**Additional Amount**) equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (c) If a party must reimburse or indemnify the other party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount equal to any input tax credit the other party, or the representative member of the GST group of which the other party is a member, is entitled to with respect to the loss, cost or expense, and then increased in accordance with clause 13(b) if such amount is consideration for a taxable supply made under or in connection with this deed.
- (d) A party need not make a payment of the Additional Amount until it receives a tax invoice or adjustment note (as appropriate) for the supply to which the payment relates.

## 14 General

### 14.1 Notices

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
  - (i) in writing;
  - (ii) sent by an authorised representative of the sender; and
  - (iii) marked for the attention of the person named below,
 and must be:
  - (iv) left at, or sent by commercial courier to, the address set out below; or



- (v) sent by email to the addresses set out below.

#### Target

Attention: Paul Burrows  
 Address: Suite 11C, Level 3, 299 Toorak Road, South Yarra VIC 3141  
 Email: [P.Burrows@damstratechnology.com](mailto:P.Burrows@damstratechnology.com)  
 with a copy (for information purposes only) to [akauye@gtlaw.com.au](mailto:akauye@gtlaw.com.au).

#### Bidder

Attention: Emma Hayes  
 Address: One Mere Way, Ruddington, Nottingham, NG116JS, United Kingdom  
 Email: [Emma.Hayes@ideagen.com](mailto:Emma.Hayes@ideagen.com)  
 with a copy (for information purposes only) to [nick.kipriotis@minterellison.com](mailto:nick.kipriotis@minterellison.com).

- (b) Subject to clause 14.1(c), a Notice is taken to be received:
- (i) if sent by delivery, when it is delivered;
  - (ii) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
  - (iii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,
 whichever happens first.
- (c) If a Notice is taken to be received under clause 14.1(b):
- (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
  - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day.

### 14.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts competent to hear appeals from those courts.

### 14.3 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this

deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.

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

#### **14.4 No merger**

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

#### **14.5 Waivers and consents**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by a party under this deed is only 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 deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent of a party is required under this deed, such consent may be given or withheld in that party's absolute discretion.

#### **14.6 Variation**

- (a) Subject to clause 14.6(b), this deed may only be varied by a document signed by or on behalf of Target and Bidder.
- (b) On and from the Implementation Date, the parties may not amend or vary this deed in a manner that adversely affects any right or benefit conferred on a Target Indemnified Party (other than Target) or Bidder Indemnified Party (as the case may be) under this deed without the prior written consent of the majority of directors of Target at the date of this deed or the Bidder Indemnified Party (as the case may be).

#### **14.7 Assignment**

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

#### **14.8 Further action**

Each of the parties will do all things and execute all further documents necessary to give full effect to this deed.

#### 14.9 Entire agreement

- (a) This deed and any other documents specified by the parties for the purposes of this clause 14.9(a):
  - (i) supersede all previous agreements, understandings, negotiations or deeds between the parties in respect of the subject matter of this deed and any other such documents specified by the parties; and
  - (ii) embody the entire agreement between the parties in respect of the subject matter of this deed and any other such documents specified by the parties.
- (b) Despite clause 14.9(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 deed prevails.

#### 14.10 Severability

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction.
- (b) Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed will have full force and effect in that (and any other) jurisdiction.
- (c) This clause 14.10 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

#### 14.11 Withholding

- (a) If the Bidder is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the Commissioner of Taxation in respect of the acquisition of Target Shares from certain Scheme Shareholders, the Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.
- (b) The Target agrees that the Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that the Bidder reasonably requires in making that approach. The Bidder agrees:
  - (i) to provide the Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, to take into account the Target's reasonable comments on those documents and more generally in relation to the Bidder's engagement with the ATO in connection with the application of Subdivision 14-D to the Transaction; and
  - (ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without the Target's prior written consent.
- (c) 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 ATO following the process mentioned in clause 14.11(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 deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders.

#### 14.12 Service of process

- (a) The Bidder irrevocably:
  - (i) nominates as its agent to receive service of process or other documents with respect to any legal action or proceedings arising out of or in connection with or in any way related to this deed or its subject matter, Ideagen (Australia) Pty Ltd ACN 666 532 323; and
  - (ii) agrees that service on that agent (or any other person appointed under clause 14.12(a)(i)) (each a **Process Agent**) will be sufficient service on it.
- (b) The Bidder must ensure that each Process Agent remain authorised to accept service on its behalf. If any Process Agent ceases to have an office in the place specified, the Bidder must ensure that there is another person in that place acceptable to the Target to receive process on its behalf, and must promptly notify the Target of the appointment of that other person.

#### 14.13 Counterparts

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

#### 14.14 Electronic execution

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

#### 14.15 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.

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## Schedule 1 Dictionary

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### 1 Dictionary

**Additional Amount** has the meaning given in clause 13(b).

**Adviser** means a financier (whether debt or equity, or an existing or prospective financier), financial adviser, corporate adviser, accounting adviser, auditor, legal adviser (including any legal adviser to a debt financier), technical adviser, management consultant, warranty insurer or other adviser, consultant or expert engaged by Bidder (or a Related Body Corporate of Bidder) in connection with the Transaction.

**Affiliate** means, in respect of a person (the primary person), a person:

- (a) Controlled directly or indirectly by the primary person;
- (b) Controlling directly or indirectly the primary person; or
- (c) who is Controlled, directly or indirectly, by a person or persons who Control the primary person,

where Control means, with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person. For the avoidance of doubt, an Affiliate of a person will include (but not be limited to) a Related Body Corporate of that person.

**Aggregate Scheme Consideration** means the Scheme Consideration multiplied by the total number of Scheme Shares.

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

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

**ASX** means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it.

**ASX Listing Rules** means the official listing rules of ASX.

**ATO** means the Australian Taxation Office.

**Bidder Counterproposal** has the meaning given in clause 6.7(a)(v).

**Bidder Deal Team** means each of Emma Hayes, Ben Dorks, Adam Foster and Chris Knaup.

**Bidder Group** means Bidder and its Affiliates.

**Bidder Indemnified Parties** means Bidder and its Affiliates and their respective directors, officers, employees and Advisers.

**Bidder Information** means information regarding Bidder and its Affiliates provided by or on behalf of Bidder to Target or its Representatives for inclusion in the Scheme Booklet.

**Bidder Warranties** means the representations and warranties of Bidder set out in Schedule 3.

**Break Fee** means \$690,000 being approximately 1% of the Aggregate Scheme Consideration payable to all Scheme Shareholders (excluding GST).

**Business Day** has the meaning given in the ASX Listing Rules.

**Change of Control Requirements** has the meaning given to that term in clause 5.4.

**Competing Proposal** means any actual, potential or proposed proposal, offer, expression of interest, agreement, arrangement or transaction which, if entered into or completed, substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associates):

- (a) directly or indirectly acquiring or having the right to acquire:
  - (i) a Relevant Interest in;
  - (ii) a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or other derivative, or similar transaction or arrangement) in; or
  - (iii) control of,
    - 15% or more of the securities in any member of the Target Group;
- (b) directly or indirectly acquiring Control of the Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of 50% or more :
  - (i) by value of the business conducted by the Target Group or any member of the Target Group; or
  - (ii) of the assets of the Target Group or any member of the Target Group;
- (d) otherwise directly or indirectly acquiring or merging with Target or any member of the Target Group; or
- (e) requiring Target to abandon, or otherwise fail to proceed with, the Transaction,
 

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

For the avoidance of doubt, each successive material modification or variation of a Competing Proposal will constitute a new Competing Proposal.

**Condition** means a condition precedent set out in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement between Target and Bidder dated 22 November 2023.

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

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

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

**Court** means the Federal Court of Australia (sitting in Melbourne) or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Target and Bidder.

**Court Documents** means the documents required for the purposes of the Court Hearings, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders.

**Court Hearings** means the First Court Hearing and Second Court Hearing.

**D&O Run-off Policy** has the meaning given in clause 5.8.

**Data Room** means the electronic data room established by Target in connection with the Transaction, the contents of which are provided by Target to Bidder on a USB drive device on or before the date of this deed.

**Deed Poll** means the deed poll to be entered into by Bidder substantially in the form of Attachment C.

**Disclosing Party** has the meaning given in clause 11.3(b)(i).

**Disclosure Letter** means the letter so titled from Target provided to Bidder on or prior to the date of this deed.

**Disclosure Materials** means:

- (a) the Disclosure Letter;
- (b) the documents and information contained in the Data Room as at 11.59pm on the date which is 1 Business Day prior to the date of this deed (a copy of which is provided by Target to Bidder on a USB drive device on or before the date of this deed); and
- (c) written responses from Target and its Representatives to requests for further information made by Bidder and its Representatives prior to 11.59pm on the date which is 1 Business Day prior to the date of this deed (a copy of which is provided by Target to Bidder on a USB drive device on or before the date of this deed).

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

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

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA, but excluding a Permitted Encumbrance.



**End Date** means the date which is 6 months from the date of this deed, or such later date as Target and Bidder agree in writing.

**Equity Incentive Plan** means the Target equity incentive plan adopted by the Target Board and disclosed to ASX on 16 October 2019.

**Exclusivity Period** means the period from the date of this deed until the earlier of:

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

**Fairly Disclosed** means, in relation to a matter, fact, circumstance or event, such matter, fact, circumstance or event being disclosed in sufficient detail and to a sufficient extent to enable a reasonable and sophisticated person experienced in transactions similar to the Transaction to identify the nature, scope and potential impact of the relevant matter, fact, circumstance or event.

**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 the Target Group; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

**FIRB Approval** has the meaning given to that term in clause 3.1(a).

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **First Court Hearing**.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local

or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel).

**GST** has the meaning given to that term in the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**GST exclusive consideration** has the meaning given in clause 13(b).

**Implementation Committee** has the meaning given to that term in clause 5.3.

**Implementation Date** means the fifth Business Day after the Record Date or such other day as Target and Bidder agree in writing.

**Independent Expert** means the independent expert in respect of the Scheme appointed by the Target to prepare the Independent Expert's Report.

**Independent Expert's Report** means the report prepared by the Independent Expert for inclusion in the Scheme Booklet opining on whether the Scheme is in the best interests of Target Shareholders, and includes an update or supplement to that report.

**Insolvency Event** means, in relation to any entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation);
- (f) the entity being deregistered as a company or otherwise dissolved; or
- (g) something having a substantially similar effect to any of the things described in paragraphs (a) to (f) of this definition happens in connection with the entity under the law of any foreign jurisdiction.

**Key Person** has the meaning given to that expression in clause 5.1(b)(xi).

**Material Adverse Change** means an event, change or circumstance (including a one-off or non-recurring event) occurring or first becoming known to the Bidder on or after, the date of this deed (each a **Specified Event**) which, whether individually or when aggregated with all Specified Events that have occurred, has resulted in or would reasonably be expected to result in or have the effect of:

- (a) a reduction in the consolidated annual recurring software subscription revenue (excluding, for the avoidance of doubt, any hardware or other services revenue) of the Target Group of at least \$1,000,000; or

- (b) a reduction in the consolidated annual revenue (excluding annual recurring software subscription revenue) of the Target Group of at least \$750,000,

but excluding any matter which:

- (c) is required or permitted by a Transaction Document or any transactions contemplated by a Transaction Document, in either case only to the extent expressly required or permitted under a Transaction Document or otherwise agreed in writing by Target and Bidder;
- (d) is Fairly Disclosed in:
  - (i) the Disclosure Materials;
  - (ii) an announcement made by Target or a Target Group member to the ASX in the past 12 months;
  - (iii) a publicly available document lodged by Target or a Target Group Member with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection) in the 12 months prior to the date of this deed; or
  - (iv) a publicly available document which would be disclosed in a search of the PPS Register or the public records maintained by any court in relation to the Target or any Target Group Member in the 12 months prior to the date of this deed;
- (e) is within the actual knowledge of the Bidder Deal Team as at the date of this deed;
- (f) has been approved, consented to or requested by Bidder in writing prior to the occurrence of such matter;
- (g) relates to payment of any Transaction costs and expenses incurred by Target associated with the Transaction, to the extent that total Transaction costs and expenses incurred by Target associated with the Transaction does not exceed the aggregate amount agreed between Target and Bidder in writing on the date of this deed; or
- (h) results or arises from:
  - (i) any actual or proposed change in any law, regulation or policy, or in any accounting principle or standard;
  - (ii) general economic or political conditions or changes in any such conditions (including disruptions to, or fluctuations in, financial markets, or changes in interest rates, foreign currency exchange rates or commodity prices) other than where such matters have a materially disproportionate effect on the Target Group as compared to other participants in the industry in which the Target Group operates; or
  - (iii) any act of terrorism, war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like, other than where such matters have a materially disproportionate effect on the Target Group as compared to other participants in the industry in which the Target Group operates.

**Material Contract** means a contract or commitment, or a group of related contracts with the same party or group of related parties, under which the Target Group receives or may

receive annual revenue or incurs or may incur annual expenditure in excess of \$100,000 per annum.

**Non-Public Information** means any non-public information about the business or affairs of the Target Group.

**Notice** has the meaning given in clause 14.1(a).

**Options** means the options to acquire Target Shares issued under the Target's Equity Incentive Plan as set out in Schedule 5.

**Permitted Encumbrance** means:

- (a) any bankers' liens or netting or set off arrangement entered into by a member of the Target Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (b) any interest which would be an 'Encumbrance' only by virtue of the operation of section 12(3) of the PPSA;
- (c) any lien arising by operation of law and in the ordinary course of business either securing amounts not yet due or, if due, that are being contested in good faith;
- (d) any lien for money payable for work performed by suppliers, mechanics, workmen, repairmen or employees and, in each case, arising in the ordinary course of business either not yet due or, if due, that are being contested in good faith; and
- (e) any lien for rates, Taxes or fees of any kind payable to a Government Agency, where such amounts are either not yet due or are being contested in good faith by appropriate proceedings.

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

**PPS Register** means the register established under the PPSA.

**Prescribed Occurrence** means the occurrence of any of the matters set out in Schedule 4.

**Record Date** means 7:00pm on the fifth Business Day after the Effective Date of the Scheme, or such other time and date as Target and Bidder agree in writing.

**Recommendation** has the meaning given to that term in clause 2.4(b)(i)(A).

**Registry** means Automic Pty Ltd (ACN 152 260 814).

**Regulatory Approval** means an approval, consent or notification required to satisfy the Condition in clause 3.1(a).

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

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

**Representative** means, in respect of a party, an employee, agent, representative, officer, director, Related Body Corporate, adviser or financier of that party (or of a Related Body Corporate of that party), and, in the case of Advisers and financiers, includes directors, employees, officers, contractors and agents of the Adviser or financier (as applicable) of Bidder.

**Reverse Break Fee** means \$690,000, being approximately 1% of the Aggregate Scheme Consideration payable to all Scheme Shareholders (excluding GST).

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders under which all the Target Shares will be transferred to Bidder, in the form of Attachment B or such other form as agreed in writing between Target and Bidder.

**Scheme Booklet** means the explanatory statement in respect of the Scheme, which will contain (among other things) the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

**Scheme Consideration** means, in respect of each Scheme Share, \$0.24.

**Scheme Meeting** means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act or any adjournment thereof.

**Scheme Share** means a Target Share held by a Scheme Shareholder.

**Scheme Shareholder** means a Target Shareholder as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

**Share Register** means the register of Target Shareholders maintained in accordance with the Corporations Act.

**Standard Tax Conditions** means the tax-related conditions customarily imposed by the ATO as set out in section D of version 3 of guidance note 12 updated on 10 August 2023 (as amended from time to time) available at <https://foreigninvestment.gov.au/sites/foreigninvestment.gov.au/files/2023-08/guidance-note-12-tax-conditions-august-2023.pdf>.

**Subdivision 14-D** has the meaning given in clause 14.11(a).

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

**Superior Proposal** means a bona fide Competing Proposal in relation to the acquisition of more than 50% of issued securities of the Target which is received by the Target and which the Target Board determines, acting reasonably and 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 the Target's external legal adviser and financial adviser) and taking into account all material legal, financial, regulatory and other aspects of the Competing Proposal and the identity of the proponent of the Competing Proposal:

- (a) is reasonably capable of being valued and implemented; and
- (b) would, if completed in accordance with its terms, be more favourable to the shareholders of the Target than the latest proposal provided by the Bidder or any of its Related Bodies Corporate.

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

**Target Board** means the board of directors of Target.

**Target Cash Incentives** means any actual or potential rights (including any rights that are contingent or conditional) to receive or be paid any cash or other payment or amount under, or pursuant to, any employee incentive or bonus arrangements from time to time of the Target Group (including, without limitation, in respect of any short term incentive or long term incentive plan or arrangement).

**Target Convertible Securities** means the Warrants and Options as listed in Schedule 5.

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

**Target Equity Incentives** means any actual or potential rights (including any rights that are contingent or conditional) to acquire or be issued with a Target Share (or any other securities in the Target, including future grants of equity incentives, securities, options and/or other incentives) under, or pursuant to, any employee incentive arrangements from time to time of the Target Group (including, with limitation, the Equity Incentive Plan).

**Target Group** means, collectively, Target and each of its Related Bodies Corporate.

**Target Indemnified Parties** means Target and its Related Bodies Corporate and their respective current and former directors, officers, employees and Advisers.

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

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

**Target Shareholder** means a holder of one or more Target Shares, as shown in the Share Register.

**Target Warranties** means the representations and warranties of Target set out in Schedule 2.

**Tax** means any tax, duty, levy, charge, impost, fee, deduction, goods and services tax (including GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, charge, fee or any other amount imposed on, or in respect of the above.

**Third Party** means a person other than Bidder and its Associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Attachment A.

**Transaction** means the acquisition of Target by Bidder (or a wholly-owned Subsidiary of Bidder) by means of the Scheme in accordance with the terms of this deed.

**Transaction Document** means:

- (a) this deed;
- (b) the Scheme;
- (c) the Deed Poll; and
- (d) any other documents specified by the parties pursuant to clause 14.9(a).

**Treasurer** means the Treasurer of the Commonwealth of Australia.

**Voting Intention** has the meaning given in clause 2.4(b)(i)(B).

**W&I Deed** means the Warranty & Indemnity Deed, in the form agreed by Target and Bidder on the date of this deed (as may be varied or amended by agreement between Target and Bidder), to be entered into between Target and Bidder.

**W&I Insurance Policy** means the policy of warranty and indemnity insurance relating to this deed and the W&I Deed to be issued by the relevant insurer(s) to Bidder and/or another member of the Bidder Group on or about the date of the W&I Deed.

**Warrants** means the warrants exercisable into Target Shares held by Partners for Growth V, L.P. and Partners for Growth VI, L.P. set out in Schedule 5.

**Warranty** means a Target Warranty or Bidder Warranty (as applicable).

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## 2 Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'include', 'including', 'such as', 'for example' and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, Government Agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or an ASX Listing Rule and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);



- (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
- (x) a monetary amount is in Australian dollars.
- (g) An agreement on the part of two or more persons binds them jointly and severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) In determining the time of day where relevant to this deed, the time of day is:
  - (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
  - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

## Schedule 2 Target Warranties

- (a) **Validly existing:** Target is a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** Target has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme.
- (c) **Corporate action:** Target has taken the necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme.
- (d) **Authorisations:** Target has in full force and effect each authorisation necessary for it to enter into this deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced.
- (e) **Binding:** This deed is a valid and binding obligation on Target, enforceable in accordance with its terms.
- (f) **Performance:** The execution and performance by Target of this deed does not and will not violate or breach any provision of:
- (i) any writ, order or injunction, judgment, law, rule or regulation to which Target is party or by which it is bound; or
  - (ii) Target's constitution,
- and Target is not otherwise bound by any agreement or deed that would prevent or restrict Target from entering into and/or performing this deed.
- (g) **Capital structure:** As at the date of this deed, Target's capital structure is as set out in Schedule 5 (*Capital Structure*) and:
- (i) other than pursuant to the terms of the Equity Incentive Plan in respect of the Options and terms of the Warrants, it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, share rights, performance rights or other securities or instruments in Target; and
  - (ii) it has not issued or agreed to issue any other Target Shares or other securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, Target Shares (other than the Options and Warrants set out in Schedule 5).
- (h) **Target Information:** The Target Information included in the Scheme Booklet as at the date it is dispatched and any supplementary disclosure made to Target Shareholders pursuant to clause 4.2(j) at the date such disclosure is made (in each case excluding any information provided by Bidder):
- (i) will be prepared in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purposes of determining to proceed with the Transaction, including approving entry into the Deed Poll and implementing the Scheme;
  - (ii) as at the date of the Scheme Booklet or supplementary disclosure (as applicable), will not be misleading or deceptive in any material respect; and

- (iii) will comply in all material respects with the requirements of the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the ASX Listing Rules.
- (i) **Scheme Booklet:** Any statement of belief or opinion contained in the Scheme 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.
- (j) **Information provided to Independent Expert:** The information to be provided to the Independent Expert by Target will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (k) **Continuous disclosure:** As at the date of this deed, Target is not in breach of its continuous disclosure obligations under the ASX 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 deed).
- (l) **ASX / ASIC enforcement:** As at the date of this deed, 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 ASX Listing Rules or any rules, regulations or policy statements under the Corporations Act or the ASX Listing Rules;
- (m) **Insolvency Event or regulatory action:** No member of the Target Group is the subject of an Insolvency Event, nor has any regulatory action of any nature of which Target is aware been taken or threatened that would prevent or in any way restrict its ability to fulfil its obligations under a Transaction Document to which it is a party.
- (n) **Licenses and permits:** each member of the Target Group has all material licenses and permits necessary for it to conduct its business.
- (o) **Financial statements:** 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.
- (p) **Disclosure Materials:** The Disclosure Materials were compiled and made available to Bidder and its Representatives in response to Bidder's requests for due diligence information in good faith, and as far as Target is aware, are not false or misleading in any material respect, whether by way of omission or otherwise. For the avoidance of doubt, Target makes no representation or warranty whatsoever:
- (i) in relation to any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed; or
  - (ii) as to the adequacy or sufficiency of the Disclosure Materials for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisitions, which are matters of which Bidder has to satisfy itself.

- (q) **No material litigation or enforcement:** as at the date of this deed, no member of the Target Group is:
- (i) a party to any material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
  - (ii) the subject of any material ruling, judgement, order, declaration or decree by any Government Agency and as far as Target is aware, there is no such material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation, ruling, judgment, order, declaration or decree pending, threatened or anticipated, against any Target Group member.
- (r) **No Encumbrances:** Other than as disclosed in the Disclosure Materials, there are no material Encumbrances over any of Target's assets or revenue.
- (s) **Material contracts:** with respect to Material Contracts, as far as Target is aware:
- (i) no Target Group Member is in material default under a material contract to which it is a party, and nothing has occurred which is an event of default or give another party a termination right;
  - (ii) 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
  - (iii) no member of the Target Group has received, or given, any notice of termination of any Material Contract.
- (t) **Change of control:** As at the date of this deed, and so far as the Target Directors and the senior management of any member of the Target Group are aware, there are no material 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 Transaction (except as otherwise Fairly Disclosed in the Disclosure Materials).
- (u) **Material Adverse Change:** Target is not aware of any information relating to the Target Group or the businesses or operations of the Target Group as at the date of this deed 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 Disclosure Materials.

## Schedule 3 Bidder Warranties

- (a) **Validly existing:** Bidder is a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** Bidder has full corporate power and lawful authority to execute, deliver and perform this deed and the Deed Poll.
- (c) **Corporate action:** Bidder has taken all necessary corporate action to authorise the entry into this deed and has taken or will take all necessary corporate action to authorise the performance of this deed and the Deed Poll.
- (d) **Binding:** This deed is a valid and binding obligation on Bidder, enforceable in accordance with its terms.
- (e) **Performance:** The execution and performance by Bidder of this deed did not and will not violate or breach any provision of:
- (i) any writ, order or injunction, judgment, law, rule or regulation to which Bidder is party or by which it is bound; or
  - (ii) Bidder's constitution or any other of its constituent documents.
- (f) **No interest except as disclosed:** as at the date of this deed, neither it nor any of its Associates or Affiliates has:
- (i) a Relevant Interest in any Target Shares; or
  - (ii) entered 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 (including cash-settled derivatives, contracts for difference and other derivatives).
- (g) **Bidder Information:** The Bidder Information included in the Scheme Booklet, and any other information provided by Bidder pursuant to clause 4.3(f), will be prepared in good faith and, as at the date of the Scheme Booklet or the date on which such information is so provided (as applicable):
- (i) is not misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (ii) complies in all material respects with the requirements of the Corporations Act and Corporations Regulations, ASX Listing Rules, Takeovers Panel guidance notes and ASIC Regulatory Guide 60 (as applicable).
- (h) **Information provided to Independent Expert:** The information provided to the Independent Expert by Bidder has been provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (i) **Insolvency Event or regulatory action:** Neither Bidder nor any member of the Bidder Group is the subject of an Insolvency Event, nor has any regulatory action of any nature of which Bidder is aware been taken or threatened that would prevent or in any way restrict its ability to fulfil its obligations under this deed.

- (j) **No other regulatory approvals:** Other than the Regulatory Approvals, no approval, consent, waiver, clearance, concession, allowance, notification or authorisation is required to be obtained from, or made to, any Government Agency in order for Bidder to execute and perform this deed.
- (k) **No dealings with Target Shareholders:** Other than as disclosed on ASX on or about the date of this deed, as at the date of this deed, neither Bidder nor any of its Associates has any agreement, arrangement or understanding in writing with any Target Shareholder:
- (i) under which that Target Shareholder:
    - (A) (or an Associate of that Target Shareholder) would become entitled to receive any benefit in relation to the Scheme that is not also offered to all other Target Shareholders on the same terms; or
    - (B) agrees to vote in favour of the Scheme or against any Competing Proposal; or
  - (ii) in relation to the business or operations of the Target Group after the Effective Date.
- (l) **No dealings with Target Directors or employees:** Other than as disclosed on ASX on or about the date of this deed, as at the date of this deed neither Bidder nor any of its Associates has any agreement, arrangement or understanding in writing with any director, officer or employee of Target or any other member of the Target Group in relation to the business or operations of the Target Group after the Effective Date.
- (m) **Sufficient cash amounts – reasonable expectation at date of this deed:** at all times between the date of this deed and 8.00am on the Second Court Date, Bidder has a reasonable basis to expect that it will 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 deed, the Scheme and the Deed Poll;
- (n) **Availability of funding on Second Court Date:** By 8:00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the Scheme becoming Effective or procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Scheme becomes Effective) sufficient cash amounts (whether from internal cash resources or external funding arrangements or combination of both) to ensure that the Aggregate Scheme Consideration is paid in accordance with this deed and the Deed Poll.
- (o) **Availability of funding on Implementation Date:** Bidder will have available to it by the Implementation Date on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding arrangements or a combination of both) to satisfy Bidder's obligation to pay the Aggregate Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.
- (p) **No shareholder approvals:** No approvals are required from shareholders of Bidder (or any class of them) in connection with the execution or performance of this deed or, to the extent any such approvals are required, they were obtained prior to the date of this deed.

## Schedule 4 Prescribed Occurrences

- (a) Target converting all or any of its shares into a larger or smaller number of shares;
- (b) Target resolving to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) Target:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Target Group issuing shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a performance right or an option other than:
  - (i) on vesting or exercise of, or in respect of, an Option existing as at the date of this deed; or
  - (ii) to a member of the Target Group;
- (e) any member of the Target Group issuing, or agreeing to issue, securities convertible into shares or debt securities other than where the securities are issued, or agreed to be issued, to a member of the Target Group;
- (f) a member of the Target Group making any change to its constitution or constituent documents;
- (g) Target determining, declaring, paying or distributing any distribution, bonus, special payment or other share of its profits or assets (whether in cash or in specie);
- (h) a member of the Target Group disposing, or agreeing to dispose, of the whole, or a material part, of the Target Group's business or property;
- (i) a member of the Target Group creating, granting, or agreeing to create, grant, a Encumbrance over the whole, or a material part, of the Target Group's business or property; or
- (j) an Insolvency Event occurs in relation to a Target Group member;

but does not include any occurrence:

- (k) Fairly Disclosed in:
  - (i) the Disclosure Materials;
  - (i) an announcement made by Target or a Target Group member to the ASX in the past 12 months;
  - (ii) a publicly available document lodged by Target or a Target Group Member with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection) in the 12 months prior to the date of this deed; or
  - (iii) a publicly available document which would be disclosed in a search of the PPS Register or the public records maintained by any court in relation to the



Target or any Target Group Member in the 12 months prior to the date of this deed;

- (l) required or expressly permitted by a Transaction Document or the transactions contemplated by a Transaction Document, in either case only to the extent expressly required or permitted under a Transaction Document or otherwise agreed in writing by Target and Bidder; or
- (m) approved, consented to or requested by Bidder or any of its Affiliates in advance in writing.

Schedule 5      Capital Structure

(a)    Target Shares

257,882,093

(b)    Options

43,090,775 Options as set out in the table below:

No. Options	Exercise Price (per Option)	Expiry Date
2,668,585	\$3.2375	30 September 2026
755,034	\$1.6975	1 September 2027
519,998	\$0.00	16 October 2034
1,964,284	\$1.5175	16 October 2034
729,274	\$0.00	30 September 2035
19,724	\$0.00	16 December 2035
24,858	\$0.00	9 April 2036
201,082	\$0.00	1 September 2036
729,468	\$0.00	1 September 2036
3,281,250	\$0.00	31 March 2037
2,545,000	\$0.00	1 October 2037
3,758,646	\$0.00	17 October 2037
125,000	\$0.00	24 October 2037
100,000	\$0.00	28 November 2037
3,494,430	\$0.00	30 November 2037
231,552	\$0.00	25 January 2038
371,036	\$0.00	19 April 2038
4,260,000	\$0.00	1 July 2038

No. Options	Exercise Price (per Option)	Expiry Date
284,721	\$0.00	8 December 2038
303,233	\$0.00	14 August 2038
3,248,106	\$0.00	28 November 2038
5,570,652	\$0.00	29 November 2038
7,904,842	\$0.00	25 October 2038

(c) **Warrants**

No. Warrants	Exercise Price	# Shares exercisable into	Expiry Date
1	\$1.3075 per Target Share	222,729	30 June 2028
1	\$1.3075 per Target Share	73,736	30 June 2028
1	\$1.2175 per Target Share	178,979	30 June 2028
1	\$1.2175 per Target Share	59,252	30 June 2028
1	\$1.1275 per Target Share	96,373	30 June 2028
1	\$1.1275 per Target Share	31,905	30 June 2028
1	\$1.0375 per Target Share	104,404	30 June 2028
1	\$1.0375 per Target Share	34,564	30 June 2028
2	\$0.17 per Target Share	664,557	18 July 2030
2	\$0.15 per Target Share	766,797	18 July 2030
1	\$0.10 per Target	5,168,777	18 July 2030

No. Warrants	Exercise Price	# Shares exercisable into	Expiry Date
	Share		
1	\$0.10 per Target Share	5,168,776	18 July 2030

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## Execution page

Executed as a deed.

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Signed sealed and delivered by **Damstra Holdings Limited** in accordance with Section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director



Signature of director/secretary

JOHANNES RISSEUW.

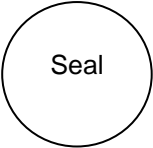
Name of director (print)

Drew Fairchild

Name of director/secretary (print)

Executed as a deed.

Signed on behalf of, and sealed and delivered  
by, **Ideagen Limited** (UK company  
number 02805019) by:



DocuSigned by:  
*Benjamin Charles Dorks*  
5D7A330FDF0455...  
Signature of authorised signatory

BENJAMIN CHARLES DORKS  
Name of authorised signatory

DocuSigned by:  
*Emma Jane Hayes*  
22C1C1C237AD4BF...  
Signature of authorised signatory

EMMA JANE HAYES  
Name of authorised signatory

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Attachment A      Indicative Timetable

Event	Date
Announcement and signing of scheme implementation deed	25 January 2024
Scheme Booklet provided to ASIC in draft	Mid-February 2024
First Court Hearing	Early March 2024
Scheme Meeting	Early April 2024
If the Scheme is approved by Target Shareholders at the Scheme Meeting	
Second Court Hearing	Early-to-mid April 2024
Effective Date	Early-to-mid April 2024
If the Scheme is approved by the Court and becomes Effective	
Record Date	Mid-April 2024
Implementation Date	Late April 2024

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**Attachment B      Scheme of arrangement**

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## **Scheme of arrangement**

**Damstra Holdings Limited**

**Each person registered as a holder of fully paid ordinary shares in Damstra Holdings Limited as at the Record Date**

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**Date:**

This scheme of arrangement is made under section 411 of the Corporations Act.

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## Parties

- 1 **Damstra Holdings Limited ACN 610 571 607** of Suite 11C, Level 3, 299 Toorak Road, South Yarra, 3141 (**Target**)
- 2 Each Target Shareholder registered as a holder of fully paid Target Shares as at the Record Date (**Scheme Shareholders**)

### The parties agree

---

## 1 Defined terms and interpretation

### 1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

---

## 2 Preliminary matters

### 2.1 Target

- (a) Target is an Australian public company limited by shares and Target has been admitted to the official list of ASX.
- (b) As at the date of the Implementation Deed:
  - (i) 257,882,093 Target Shares were on issue and officially quoted for trading on ASX; and
  - (ii) the following securities were on issue:
    - (A) 43,090,775 Options; and
    - (B) 8 Warrants (exercisable into 13,200,261 Target Shares).

### 2.2 Bidder

- (a) Bidder is a private company limited by shares, incorporated and registered in the United Kingdom.

### 2.3 If Scheme becomes Effective

- (a) If this Scheme becomes Effective:
  - (i) in consideration of the transfer of the Scheme Shares to Bidder, Bidder must provide or procure the provision of the Scheme Consideration to Target on behalf of the Scheme Shareholders in accordance with this Scheme and the Deed Poll; and

- (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder on the Implementation Date; and
  - (iii) Target will enter the name of Bidder in the Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.
- (b) Target and Bidder have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
  - (c) This Scheme attributes certain actions to Bidder but does not itself impose any obligations on Bidder to perform those actions, as Bidder is not a party to this Scheme. By executing the Deed Poll, Bidder has agreed to perform the actions attributed to Bidder under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders subject to the terms and conditions of this Scheme.

### 3 Conditions

#### 3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until and unless the following conditions precedent are satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(d) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8:00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms before 8:00am on the Second Court Date;
- (c) this Scheme is approved by the Court having made orders under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are accepted in writing by Target and Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are accepted in writing by Target and Bidder (each acting reasonably) are satisfied or waived; and
- (e) the order of the Court made under section 411(4)(b) of the Corporations Act approving this Scheme becoming Effective, on or before the End Date.

#### 3.2 Certificates

- (a) Each of Target and Bidder will provide a certificate (or such other evidence as the Court may require) to the Court at the Second Court Hearing confirming (in respect of matters within their respective knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived (but in the case of the condition precedent in clause 3.1(a), only in respect of those conditions precedent in clause 3.1 of the Implementation Deed (other than the condition precedent in clause 3.1(d) of the Implementation Deed relating to Court approval of this Scheme) that are expressed in clause 3.4 of the Implementation Deed to be for that party's benefit).
- (b) The certificates given by Target and Bidder under clause 3.2(a) constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived as at 8:00am on the Second Court Date.

### 3.3 End Date

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

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

unless Bidder and Target otherwise agree in writing (and if required, as approved by the Court).

---

## 4 Implementation of this Scheme

### 4.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e)) are satisfied, Target must lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme as soon as practicable and in any event before 5:00pm on the Business Day immediately following the day on which Target receives an office copy of the court orders or such later date as Target and Bidder agree in writing.

### 4.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, on the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clauses 5.1, 5.2(b) and 5.2(c), all of the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target (or any directors, officers, or secretaries of Target) as attorney and agent for Scheme Shareholders under clause 8.5), by:
  - (i) Target, in its capacity as the attorney and agent of the Scheme Shareholders, duly completing and executing the Scheme Transfer on behalf of the Scheme Shareholders (as transferors), and delivering it to Bidder; and
  - (ii) Bidder duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to Target for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), Target must enter, or procure the entry of, the name of Bidder in the Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

---

## 5 Scheme Consideration

### 5.1 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder, subject to the terms of this Scheme.

## 5.2 Provision of Scheme Consideration

- (a) Bidder's obligation to provide the Scheme Consideration will be satisfied by Bidder depositing (or procuring the deposit), in cleared funds an amount equal to the Aggregate Scheme Consideration (less the Withholding Amount as defined in clause 5.2(c)) into the Trust Account before 12:00pm on the Business Day immediately before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) (**Accrued Interest**) will accrue for the benefit of Bidder), such amount to be held by Target for the purposes of paying the Scheme Consideration to Scheme Shareholders in accordance with clause 5.2(b).
- (b) Subject to Bidder providing the Aggregate Scheme Consideration in accordance with clause 5.2(a), Target must, on the Implementation Date and from the Trust Account, pay (or procure the payment to each Scheme Shareholder of) the proportion of the Aggregate Scheme Consideration attributable to that Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by Target:
- (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Registry to receive distribution payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount of the Aggregate Scheme Consideration in Australian currency by electronic means in accordance with that election; or
  - (ii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount of the Aggregate Scheme Consideration to the Scheme Shareholder by prepaid ordinary post (or, if the address of the Scheme Shareholder is outside Australia, by prepaid airmail post) to that Scheme Shareholder's Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or, in the case of joint holders, in accordance with clause 5.3).
- (c) If Bidder is required by section 260-5 or Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth), or section 255 of the *Income Tax Assessment Act 1936* (Cth), to pay to the Commissioner of Taxation (**Commissioner**) an amount in respect of the acquisition of Scheme Shares (the **Withholding Amount**), Bidder is permitted to deduct the Withholding Amount from the Scheme Consideration otherwise payable in respect of those Scheme Shares and remit such amounts to the Commissioner. The aggregate sum payable shall not be increased to reflect the deduction of the Withholding Amount and the net sum payable to those Scheme Shareholders to whom the Withholding Amount relates to shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.
- (d) If:
- (i) either:
    - (A) a Scheme Shareholder does not have a Registered Address; or
    - (B) Target (as the trustee for the Scheme Shareholders) believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,
 and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or
  - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.5(a),



Target (as the trustee for the Scheme Shareholders) may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic). To avoid doubt, if the amount payable to the relevant Scheme Shareholder is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the relevant Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic), Target must hold on trust the amount for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (e) To the extent that there is a surplus in the amount held by Target (as the trustee for the Scheme Shareholders) in the Trust Account, that surplus may be paid by Target (as the trustee for the Scheme Shareholders) to Bidder following the satisfaction of Target's obligations as the trustee for the Scheme Shareholders under this clause 5.2.
- (f) Target must pay any Accrued Interest to any account nominated by Bidder following satisfaction of Target's obligations under clause 5.2(b).
- (g) If this Scheme lapses after the Bidder has provided some or all of the Aggregate Scheme Consideration in accordance with clause 5.2(a), but prior to the Bidder being entered into the Share Register as the holder of the Scheme Shares in accordance with clause 4.2(b):
  - (i) Target must refund (or procure the refund) to Bidder of the amount deposited into the Trust Account in accordance with 5.2(a), together with any interest thereon (less bank fees and charges);
  - (ii) the obligation to transfer Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, to the Bidder under clause 4.2 will immediately cease; and
  - (iii) the Bidder must return the Scheme Transfer to Target if Target has provided it to the Bidder under clause 4.2(a)(i).

### 5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders of those Scheme Shares;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Record Date in respect of those Scheme Shares; and
- (c) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Record Date in respect of those Scheme Shares.

## 5.4 Fractional entitlements and splitting

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.

## 5.5 Cancellation and re-issue of cheques

- (a) Target may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to Target or the Registry; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.5(a) must be reissued.

## 5.6 Unclaimed monies

- (a) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

## 5.7 Orders of a court or Government Agency

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

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by Target in accordance with this clause 5, then Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents Target from making a payment to a particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment to any such third party or retention by Target will for all purposes constitute full discharge of Target's obligations under clause 5.2(b) with respect to the amount so paid or retained until, in the case of clause 5.7(b), it is no longer required to be retained.

# 6 Dealings in Target Shares

## 6.1 Determination of Scheme Shareholders

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

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

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

## **6.2 Register**

Target must register, or cause to be registered, registrable transmission applications or transfers of Scheme Shares in accordance with clause 6.1(b) at or before the Record Date, provided that nothing in this clause 6.2 requires Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).

## **6.3 No disposals after Record Date**

If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no legal effect and Target will be entitled to disregard any such disposal, purported disposal or agreement.

## **6.4 Maintenance of Share Register**

For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Share Register in accordance with the provisions of this clause 6.4 until the Scheme Consideration has been paid to the Scheme Shareholders and Bidder has been entered in the Share Register as the holder of all the Scheme Shares. The Share Register in this form will solely determine entitlements to the Scheme Consideration.

## **6.5 Effect of certificates and holding statements**

Subject to provision of the Scheme Consideration and registration of the transfer of the Scheme Shares to Bidder in accordance with this Scheme, all statements of holding or share certificates for Scheme Shares (other than statements of holding in favour of Bidder or its successors in title) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.

## **6.6 Details of Scheme Shareholders**

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

## 7 Quotation of Target Shares

- (a) Target will apply to ASX to suspend trading in Target Shares with effect from the close of trading on the ASX on the Effective Date.
- (b) Target will apply:
  - (i) for termination of the official quotation of Target Shares on the ASX; and
  - (ii) to have itself removed from the official list of ASX,
 in each case with effect on and from the close of trading on the ASX on the trading day immediately following the Implementation Date, or such later date as may be:
  - (iii) requested by Bidder, acting reasonably; and
  - (iv) permitted by ASX.

## 8 General Scheme provisions

### 8.1 Consent to amendments to this Scheme

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

- (a) Target may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Bidder, acting reasonably, has consented (whether in writing or by Bidder's counsel); and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel for Target has consented.

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
  - (i) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
  - (iii) agrees to, on the direction of Bidder, destroy any share certificates relating to their Scheme Shares;
  - (iv) acknowledges and agrees that this Scheme binds Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting),
 without the need for any further act by the Scheme Shareholder.
- (b) Each Scheme Shareholder is taken (by operation of this Scheme and without the need for any further act by that Scheme Shareholder) to have warranted to Target and Bidder, and appointed and authorised Target as its attorney and agent to warrant to Bidder, that:
  - (i) all of their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
    - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of

the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and

- (B) restrictions on transfer of any kind;
- (ii) they have full power and capacity to transfer their Scheme Shares to Bidder under the Scheme together with any rights and entitlements attaching to those Scheme Shares;
- (iii) as at the Record Date, they have no existing right to be issued any other Scheme Shares, any other form of Target Shares, options exercisable into Target Shares, Target convertible notes or any other securities in Target.

### 8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, be fully paid and will vest in Bidder free from all:
  - (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
  - (ii) restrictions on transfer of any kind.
- (b) On the provision of the Scheme Consideration in the manner contemplated by clause 5, Bidder will be beneficially entitled to the Scheme Shares to be transferred to Bidder under this Scheme pending registration by Target of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

### 8.4 Appointment of Bidder as sole proxy

On the provision of the Scheme Consideration in the manner contemplated by clause 5 and until Target registers Bidder as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) without the need for any further act by that Scheme Shareholder, irrevocably appoints Bidder as attorney and agent (and directs Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder from time to time as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in that Scheme Shareholder's name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) must not attend or vote at any shareholders' meetings, exercise the votes attaching to Scheme Shares registered in that Scheme Shareholder's names or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

## 8.5 Authority given to Target

On and from the Effective Date, each Scheme Shareholder, without the need for any further act by the Scheme Shareholder, irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purposes of:

- (a) enforcing the Deed Poll against Bidder; and
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing the Scheme Transfer,

and Target accepts such appointment. Target, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or secretaries (jointly, severally or jointly and severally).

## 8.6 Binding effect of this Scheme

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

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# 9 General

## 9.1 Stamp duty

Bidder will:

- (a) pay all stamp duty (if any) and any related fines and penalties payable in respect of the Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under or in connection with the Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure by Bidder to comply with clause 9.1(a).

## 9.2 Consent

Each Scheme Shareholder irrevocably consents to Target doing all acts, matters or things, including executing and delivering all deeds, instruments transfers and other documents (whether on its own behalf or as agent and attorney of that Scheme Shareholder) necessary, desirable or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it (including as may be required by law or the Court), whether on behalf of the Scheme Shareholders, Target or otherwise.

## 9.3 Notices

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

- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

#### **9.4 Governing law and jurisdiction**

- (a) This Scheme and any dispute arising out of or in connection with the subject matters of this document is governed by the laws in force in Victoria, Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.4(b)(i).

#### **9.5 No liability when acting in good faith**

Each Scheme Shareholder agrees (by operation of this Scheme and without the need for any further act by the Scheme Shareholder) that neither the Bidder nor the Target, nor any directors, officers, or secretaries of Target, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

#### **9.6 Further action**

Target must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.



# 1 Dictionary

**Aggregate Scheme Consideration** means the Scheme Consideration multiplied by the total number of Scheme Shares.

**ASX** means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it.

**Business Day** has the meaning given in the official listing rules of ASX.

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

**Deed Poll** means the deed poll dated 2024 under which, among other things, Bidder covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the Scheme.

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

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel).

**Implementation Deed** means the scheme implementation deed dated 25 January 2024 between Target and Bidder relating to, among other things, the implementation of the Scheme.

**Notice** has the meaning given in the Implementation Deed.

**Option** has the meaning given in the Implementation Deed.

**Record Date** means 7:00pm on the fifth Business Day after the Effective Date of the Scheme, or such other time and date as Target and Bidder agree in writing and ASX may allow.

**Registered Address** means, in relation to a Scheme Shareholder, the address shown in the Share Register as at the Record Date.

**Registry** means Automic Pty Ltd (ACN 152 260 814).

**Scheme** means this scheme of arrangement between Target and Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder under Part 5.1 of the Corporations Act, in consideration for the Scheme Consideration, 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 in writing by Target and Bidder.

**Scheme Consideration** means, in respect of each Scheme Share, \$0.24.

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

**Scheme Share** means a Target Share held by a Scheme Shareholder.

**Scheme Shareholder** means a Target Shareholder as at the Record Date.

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

**Second Court Date** means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving this Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

**Separate Account** has the meaning given in clause 5.2(c).

**Share Register** means the register of Target Shareholders maintained in accordance with the Corporations Act.

**Target** means Damstra Holdings Limited (ACN 610 571 607).

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

**Target Shareholder** means a holder of one or more Target Shares, as shown in the Share Register.

**Trust Account** means an Australian dollar denominated trust account which is operated by Target as trustee for the Scheme Shareholders.

**Warrant** has the meaning given in the Implementation Deed.

## 2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'include', 'including', 'such as', 'for example' and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, Government Agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
  - (vi) this Scheme includes all schedules to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or an ASX Listing Rule and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
  - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
  - (x) a monetary amount is in Australian dollars.
- (g) An agreement on the part of two or more persons binds them jointly and severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) In determining the time of day where relevant to this Scheme, the time of day is:
  - (xi) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
  - (xii) for any other purpose under this Scheme, the time of day in the place where the party required to perform an obligation is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

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**Attachment C      Deed Poll**

For personal use only

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## Deed poll

### Ideagen Limited

In favour of each person registered as a holder of fully paid ordinary shares in Damstra Holdings Limited as at the Record Date

Contents

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For personal use only

Date:

Parties

Ideagen Limited (Company Number 02805019) of One Mere Way, Ruddington, Nottingham, United Kingdom, NG11 6JS (Bidder)

In favour of each person registered as a holder of Target Shares as at the Record Date (Scheme Shareholders)

Background

- A Target and Bidder have entered into the Implementation Deed, under which:
  - (i) Target and Bidder have agreed to implement the Scheme;
  - (ii) the effect of the Scheme will be that all Scheme Shares will be transferred to Bidder; and
  - (iii) Bidder has agreed to:
    - (A) enter into this deed poll; and
    - (B) pay or procure the provision of the Scheme Consideration to each Scheme Shareholder, in accordance with the Scheme.
- B Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to undertake the actions attributed to Bidder under the Scheme.

1 Defined terms and interpretation

1.1 Defined terms

Unless the context otherwise requires:

- (a) Implementation Deed means the scheme implementation deed dated 25 January 2024 between Target and Bidder relating to (among other things) the implementation of the Scheme; and
- (b) terms defined in the Implementation Deed have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 2 of Schedule 1 of the Implementation Deed applies to the interpretation of this deed poll as if that clause was set out in full in this deed poll, except that references to 'this deed' in that clause are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

Bidder acknowledges and agrees that:

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



## 2 Conditions

### 2.1 Conditions

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

### 2.2 Termination

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

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date or any later date as the Court (with the written consent of Bidder and Target) may order,

unless Target and Bidder otherwise agree in writing.

### 2.3 Consequences of termination

If this deed poll is terminated under clause 2.2:

- (a) Bidder is released from its obligations to further perform this deed poll, except those obligations under clause 6.1; and
- (b) in addition and without prejudice to any other rights, powers or remedies available to the Scheme Shareholders, each Scheme Shareholder retains the rights they have against Bidder in respect of any breach of this deed poll which occurred before this deed poll was terminated.

## 3 Bidder undertakings

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

- (a) deposit, or procure the deposit, of the Aggregate Scheme Consideration in cleared funds into a trust account operated by Target as trustee for the Scheme Shareholders before 12:00pm on the Business Day immediately before the Implementation Date (it being noted that, in accordance with the Scheme, any interest on the amount so deposited, less bank fees and other charges, will accrue for the benefit of Bidder);
- (b) provide or procure the provision of the Scheme Consideration in accordance with the terms of the Scheme; and
- (c) undertake, or procure the undertaking of, all other actions attributed to Bidder under the Scheme, as if named as a party to the Scheme,

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

## 4 Warranties

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

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the legal right and full corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;

- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
- (e) this deed poll is valid and binding on it and is enforceable against it in accordance with the terms of this deed poll; and
- (f) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

## 5 Continuing obligations

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

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

## 6 General

### 6.1 Stamp duty

Bidder must:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure by Bidder to comply with clause 6.1(a).

### 6.2 Notices

- (a) Any notice or other communication to Bidder in connection with this deed poll must be:
  - (i) in legible writing in English;
  - (ii) signed by the person making the communication or that person's duly authorised agent; and
  - (iii) given by hand delivery, pre-paid post or email in accordance with the details set out below:

#### Bidder

Attention: Emma Hayes

Address: One Mere Way, Ruddington, Nottingham NG11 6JS, United Kingdom

Email: [Emma.Hayes@ideagen.com](mailto:Emma.Hayes@ideagen.com) with a copy (for information purposes only) to [nick.kipriotis@minterellison.com](mailto:nick.kipriotis@minterellison.com)

- (b) Subject to clause 6.2(b)(i), any notice or other communication given in accordance with clause 6.2(a) will be deemed to have been received as follows:
- (i) if sent by delivery, when it is delivered;
  - (ii) if sent by post, three days after posting (or seven days after posting if sent from one country to another);
  - (iii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,

whichever happens first.
- (c) Any notice or other communication that, pursuant to clause 6.2(b), would be deemed to be given:
- (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
  - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day,
- where references to time are to time in the place the recipient is located.

### 6.3 Cumulative rights

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

### 6.4 Waiver

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any 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 deed poll.

### 6.5 Variation

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

- (a) if before the First Court Date, the variation is agreed to by Target and Bidder in writing (which such agreement may be given or withheld without reference to, or without the approval by or consent of, any Scheme Shareholder); or

- (b) if on or after the First Court Date, the variation is agreed to by Target and Bidder in writing (which such agreement may be given or withheld without reference to, or without the approval by or consent of, any Scheme Shareholder) and the Court indicates that the variation would not of itself preclude approval by the Court of the Scheme,

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

#### **6.6 Governing law and jurisdiction**

- (a) This deed poll is governed by the laws in force in Victoria, Australia.
- (b) Bidder irrevocably:
- (i) submits to the non-exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to the Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now, or in the future, have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.6(b)(i).

#### **6.7 Assignment**

- (a) The rights created by this deed poll are personal to Bidder and each Scheme Shareholder, and must not be dealt with at law or in equity and/or otherwise assigned or encumbered.
- (b) Any purported dealing in contravention of clause 6.7(a) is invalid.

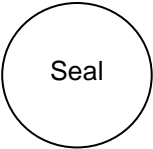
#### **6.8 Further action**

Bidder must, at its own expense, promptly do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

Execution page

Executed as a deed.

Signed on behalf of, and sealed and delivered  
by, **Ideagen Limited** (UK company  
number 02805019) by:



Signature of authorised signatory

Signature of authorised signatory

BENJAMIN CHARLES DORKS

Name of authorised signatory

EMMA JANE HAYES

Name of authorised signatory

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